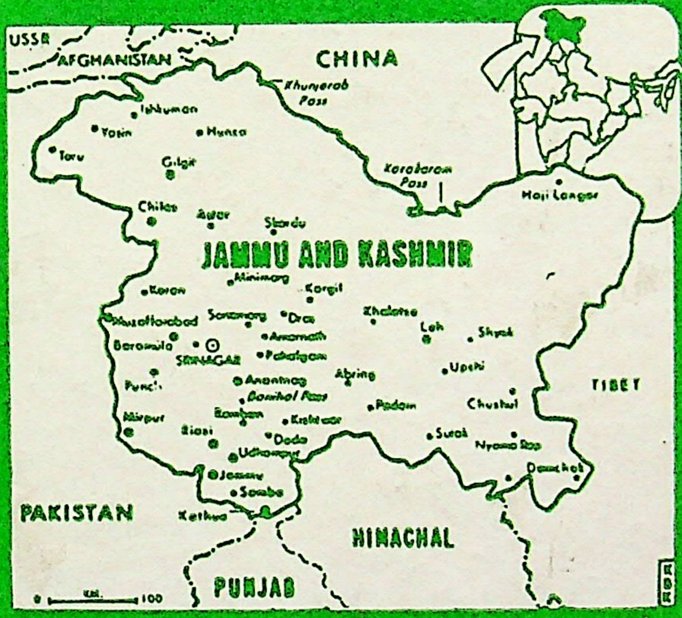
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DINANATH RAINA

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PREFACE

Time has come when factual position about Kashmir must be explained quite clearly to our friends and foes all over the world. It is more important to have this conveyed to the Government and people of Pakistan and some elements in our own country particularly the separatists in the Kashmir Valley. No obfuscation of our position must be permitted. Within the country we have tended to be apologetic about our right, claim and aim in Kashmir. Let the cobwebs of history now be removed and brushed and a clear imaginative and coherent exposure to the realities of Kashmir reach every citizen of the world. Those who have been handling media in our country have a mind-set more than four decades old.

It is with the above purpose that the book has been written with rare and revealing factual material included. In the Indian Government's fuss regarding autonomy, packages, political process and elections, the major issues, which are basic to the Kashmir imbroglio, are being lost sight of. The issues are: Validity of Accession; Non implementation of U.N. Resolutions (which in reality do not exist at all); Relevance and applicability of principle of self determination and American and British interference. On all these issues India has been apologetic and her publicity and propaganda has been half-hearted. On the other hand, Pakistan and even America as also separtists inside Kashmir have tended to be aggressive. The reason is side-tracking of basic issues by India itself.

I have squarely dealt with these basic issues in forthright and bold manner. In this exercise, the Pakistan propaganda has been smashed and cut to pieces by presentation of authentic, factual, legal and documented arguments for information of the world. Let anybody challenge my facts.

NEW DELHI

DINANATH RAINA

INTRODUCTION

There is widespread disinformation, world over, in regard to basic issues of the Kashmir problem. The disinformation owes its origin to the cold war politics which gripped the world at the end of the Second World War. Now when the cold war is supposed to have ended what is keeping the Kashmir pot boiling?

The ever-active Pakistan Government, set against a supine Indian leadership, has little difficulty in keeping the issue on the boil if not on the burn. One Indian meakness follows another and emboldens Pakistan to make direct serious inroads into Kashmir, riding on fanatical appeals to religion and an unabashed compaign of hatred against the 'Indian infidel'. India only reacts when Pakistan or her friends say or do anything in the world fora. It is thus Pakistan and section of American bureaucracy which set the agenda.

The U.S. policy on Kashmir from the fifties appears to be to make noise in favour of a settlement, while at the same time seeking to ensure that no settlement is reached or, if reached, is destroyed. Otherwise, what is the fun in an American official raising doubts about the validity to Kashmir's accession to India when a settlement is very much in operation after India and Pakistan signed a bilateral agreement at Shimla. The Shimla Agreement was ratified by the Pakistan National Assembly, the Indian Parliament and endorsed by the United Nations and world at large.

Quite often, mention is made of Kashmiri people's wishes. U.S. concern for Kashmirs wishes seems to be the same as its concern for the people of Diego Garcia, who were physically removed from the Island to enable the establishment of a U.S. nuclear base that no one can claim to have been" in accordance with the wishes of the people of Diego Garcia". The U.S. extended its boundaries by several means-out right purchase of Louisiana from France and Alaska from Russia. It acquired part of California from Mexico and so-forth. And the people of these

territories had never been consulted. Yet these deals were never brought into question by the parties involved or by any international agency under any pretence.

While the mindset of some interested powers is not easy to be changed but it is very essential to get the record righted. Pakistan as a leading Islamic country has a specific plan of action. India is mercifully not an ideological State: but secularism never meant presenting the other cheek. And quiet diplomacy does not mean keeping quiet.

Earlier, I have written two books on Kashmir, i.e. one is 'UNHAPPY KASHMIR— THE HIDDEN STORY' published in 1990. This book created tremendous awareness among the people as also uneasiness in certain circles, by its faithful presentation of events from initial usurpation of Kashmir in the thirteenth century by the Muslim invaders. It dealt with political history of Kashmir from 1931 to 1953 and also India-Pakistan war of 1947. The inside controversies of that period have been discussed with detatched mind to do justice to the political actors of those turbulent days.

The second book, 'KASHMIR__ DISTORTIONS AND REALITY' first published in 1994 has been received so well that its 1996 edition has just been out. The book, inter alia, deals with territorial, political and demographic structure of the State. The alarming consequences of ethnic cleansing by Islamic fundamentalists in Kashmir on India's present nationhood and its frightening fall-out has been lucidly described. The sensitive and basic issue of violation of human rights in Kashmir has been analysed in depth. In fact, human rights scene world over has been presented. The genesis of terrorism, insurgency and the proxy war as also suppressed realities along with commonly prevalent illusions, deceptions and distortions have been impartially narrated and commented upon. The book is a faithful and non-partisan account of what happened in Kashmir during the last six years.

While the above book continues to be the hot-favourit within the country and abroad, it has been found very essential, in the national interest, to come up with a new book, which would

serve the urgent and instant need of presenting the true facts to the world regarding the basic issues of the Kashmir problem. Hence this book: "KASHMIR GLOBAL UNTRTUTHS EXPLODED.

My sole aim and purpose in presenting this new book on Kashmir is to decisively wipe out the disinformation and imaginary presemptions prevalent world-wide with regard to India's position vis-a-vis Kashmir. The readers will be amazed to find that some global myths have been dishonestly floated to camouflage the basic facts and truth about Kashmir. It is these myths which have been masqueraded as facts to blackmail India in the international arena. It is India's misfortune that its leaders have just ignored this deep conspiracy which has been going on unchecked with the connivance of some elements within the country for the last more than four decades.

The book is a compact one and contains five chapters: 1. Accession; 2. U.N. Resolutions; 3. Self-determination, 4. American meddling; 5. and British Labour Party's electoral blackmail.

In the first Chapter, the basic issue of accession of Jammu and Kashmir State to India has been discussed in all its aspects of historic background, legal and constitutional justification as per the India Independence Act, 1947 and the political settlement for independence and partition of India, which was arrived at between the British Government, Indian National Congress, All-India Muslim League and the Indian Chamber of Princes. Pakistan's creation and Kashmir's accession to India derive their authority and legitimacy from the same Act and political settlement.

The eminent historian, Alastair Lamb has written two books on Kashmir. While the first book is a pro-Pakistan document, the second one leaves no doubt that the material for it has been supplied by the Pakistan Foreign Office. Mr Lamb's scholarship is so readily squandered that he has sidelined all legal and constitutional aspects and turned to be a Pakistani apologist. Therefore, a befitting rejoinder is due to him and this chapter provides the same.

The second chapter is historically breath-taking and epoch-making. It is a political dynamite. It proves to the hilt that the U.N. Security Council never passed any resolution proposing a plebiscite in Jammu and Kashmir State which was accepted by India. Pakistan and her friends and above all, sepatatist groups in Kashmir have been harping on the theme that India is not implementing the U.N. resolutions on Kashmir. In this chapter, this blatant lie and myth has been exploded. An investigating group of five memembers, deputed by the Security Council to investigate into India's complaint, sits in a hotel in Geneva and makes far-reaching recommendations for the final disposal of the Jammu and Kashmir State. And the world is made to believe that this is the resolution of the United Nations Security Council. Wonderful! This chapter makes a revealing discovery and sends shock waves to Pakistan and its agents. The great fraud played on India by the imperialist conspirators in the years 1948 and 1949 has been unmasked. It needs to be pushed ahead universally. Readers will be appalled to find how the Anglo-American conspiracy at Sanfransisco was implemented to make things impossible for India, which had just been able to snatch freedom from a leading colonial power.

The third chapter deals with the issue of self-determination. The British jurist and Chairman of International Commission of Jurists, Sir William Goodhart, Q.C. has declared that the right of self-determination had accrued to Kashmiris in 1947 and this right has yet to be exercised. This view of the I.C.J. has been discussed in its entirety and certain home-truths conveyed which puts the matter at its proper place. The right of self-determination which accrued to the people of India as a whole from the British colonial power was exercised by the people of India and the new nation of Pakistan in 1947 itself. It was not a continuous process to be exercised at periodical intervals by the fragmented sections of Indian and Pakistan society. Can the people of ex-Princely State of Bahawalpur (Pakistan) now stand up and say that they have not yet exercised the right of self-determination? No such right accrued to the inhabitants of erstwhile Indian Provinces and

ex-native Princely States as separate entities. It is really surprising how such prestigeious organisations like International Commission of Juristis are tempted to act in the way they do. This chapter contains enough food for though for the world community.

Chapter 4 is regarding American interference in Kashmir.

After the Kashmir issue was pushed to the cold war arena and got caught up in the jam in the United Nations, Jawahar Lal Nehru tried to settle it bilaterally with Pakistan. There was positive response from Paksitan also. Nehru invited Pakistan Prime Minster, Mohammed Ali to Delhi for talks. The two Prime Ministers met very codially from August 16, 1953 for three days. After meaningful personal talks they agreed upon a fixed schedule for solving the Kashmir imbroglio. Nehru wanted from the depth of his heart that the two countires should remain as good neighbours. At that period of time there was reciprocity from Pakistan side as well. Mohammed Ali was given affectionate welcome in Delhi. When Nehru visited Karachi he was also offered a tumultious welcome. In fact, on the day when Nehru returned, thousands of Karachi citizens througed the streets and gave him a loving farewell. People were heard singing in chorus:

"O, Hind Janey waley, Mera salam leja".

Pandit Nehru wrote a letter to the Pakistan Prime Minister, Mohammed Ali on September 3, 1953. The letter said:

"We should not allow ourselves to accept a position which might offer some temporary relief today but which might result in sowing the seeds of future trouble and conflict. ...If we aim, as we must, at closer and co-operative relationship between India and Pakistan, we must find a solution to the Kashmir problem, which is not only satisfactory to the people as a whole in Jammu and Kashmir but is also achieved without bitterness and a sense of continuing wrong to India or Pakistan. While the interests of the people of Jammu and Kashmir are paramount, there are also certain national interests of India and Pakistan which come into conflict over the Kashmir affair. It also happens that a very great

deal depends not only on the solution of the problem but perhaps even more so on the manner of doing it because that manner will have far-reaching consequences for both India and Pakistan in the present and future. ....The large minorities might well suffer and new problems might be created even bigger than one of Kashmir. We must at all costs avoid this. To ignore it in our extreme desire to show some quick results in Kashmir is bankruptcy of statesmanship. To submit to the momentary passion of an excited populace and take a wrong course is not leadership".

However, America, in pursuance of her own global plans, intervened effectively. Pakistan was made an ally of the U.S. and member of various military alliances sponsored and led by the United States. Finally, American President, Gen. Eisenhower announced on February 25, 1954, his decision to provide military assistance to Pakistan. Commenting on the U.S. Decision, Nehru told the Lok Sabha on March 1, 1954: "I have no doubt that the U.S. President is opposed to aggression. But we know from past experience that aggression takes place and nothing is done to thwart it. Aggression took place six and half years ago in Kashmir with dire consequences. Nevertheless, the U.S. has not thus far condemned it and we are asked not to press this point in the interest of peace". Inevitably, Pakistan lost interest in negotiations with India on the Kashmir issue and talks broke down. Pandit Nehru wrote to the Pakistan Prime Minister, Mohammed Ali on April 30, 1954: "It is Pakistan and not India that has taken a new step which has changed the situation entirely, and brought new factors which add to the complexity of the problem". Pakistan and introduced in the picture one of the super powers by signing a military agreement with it. The new U.S. intrusion was more serious negative factor than the earlier U.N. role in India-Pakistan affairs and came at a time when India seemed to be successful in lessening the scope for outside intervention in Indo-Pak problems.

The Military Aid Agreement between America and Pakistan was signed on May 19, 1954. As a result, massive airfields

of Pakistan at Sargodha and Peshawar and strategic airfield in the Pakistan-occupied territory of Jammu and Kashmir, viz. Gilgit were taken over by the U.S. Airforce. An American U-2 plane, which had taken off from Peshawar airbase for spying was brought down in Moscow and its pilot, Captain Powers was arrested. Among the papers found from him was a map of India showing locations of India's major military installations.

American meddling in Kashmir has been a continuous affair. Americans made every effort to assist Pakistan to develop a carefully-crafted strategy to shield from the world the fact of large-scale encouragement of terrorism by Pakistan. Few other parts of the world have been victims of such a foreign-fuelled insurgency as has been unleashed on Kashmir. It was incumbent on the American media to view the lachrymose indignation of bleeding hearts. While digesting the charges of human rights violations by the security forces, the U.S. think-tanks should have glimpsed the trauma of nearly three lakh Hindus who had to flee the Kashmir Valley and become refugees in their own country. The denial of their rights by Pakistan-funded zealots should also have been part of American concern. It is a matter of some curiosity that the question has not exercised the minds of the U.S. human rightists.

Sermons are given to India. Do not mention gallant I.S.I. infiltrators and their Afghan and Arab mercenary brothers or the youthful and misguided Kashmiri militants and terrorist alias freedom fighters. The human rights of all these fighters for Islam must be respected and their rights include inter alia, their right to roam the country-side at will unchallenged and unhindered fully armed with AK 47s. and shoulder-held and other missiles, looting, burning, rampaging and raping. Let world not accuse them.

Americans napalmed the Vietnamese people. On the Vietnamese people "agent orange" were used. What the American people did in My lai in 1968? The one incident alone has secured America the high moral pedestal from which to harangue the

world on human rights for all time to come. In a moving homage to human rights, American soldiers shot babies point-blank, raped women before killing them. Wailing women seeking to save their children, whimpering children and doddering old men were lined up and shot. And when owing to the efforts of some misguided elements, the person responsible for My Lai was sought to be arraigned by a Commission, the whole of America stood up as one man to defend that national hero for his heroic deeds. The American President, Richard Nixon, launched a propaganda offensive against the tarnishers of fair name of America. American soldiers had turned Vietnam into a vast brothel having elevated countless Vietnamese women to the position of prostitutes.

The fifth chapter in the book deals with the tactics of the Labour Party in Britain to woo the Muslim voters of that country. All principles, international conduct and behaviour, bilateral relations and non-interference in other countries' affairs have been thrown to the wind for coming to power after the next general election in Britain. Hizb-ul-Tahrir an extremist Muslim group in Britain and other exremist groups have stepped up their compaign to pressure the Labour Party into supporting "self-determination" in Kashmir. And the Party is too keen to do the needful.

To remove the Indo-Pakistan differences on Kashmir, Shimla Agreement holds the field. After all, this Agreement in no way favours India. In 1971, Pakistan army was soundly defeated in what is regarded as an exceptional example of manoeuvre warfare by the Indian Army. Ninety-three thousand prisoners and creating a new country are feats achieved in a military day-dream but India and its army made them happen. But what followed the victory was astouding when at Shimla India had Pakistan pinned to the mat, with no referees to sound the bell, and could easily have extracted its pound of flesh. And in war, the winner takes all, for that victory had been at the cost of a lot of blood. India, of course, did nothing of the sort. India has the amazing knack

of not following things, events, developments to their logical conclusion. India's terrible troubles began as a result of India's careless attitude at Shimla when it did not levy the victor's tax. Peace was imposed on terms that were not entirely conducive to India's long-term interests. A line of control is determined by the performance of the respective countries during the war and it is the winner's right to decide the contours. It is a country's war booty, reward a country gets for winning. India did not behave like a winner and repeated the Haji Peer and Ichhogil Canal (1965) episodes. India never thought that in wars winners take all.

Ninety-three thousand specimens of Pakistan's finest manhood were in India's prisons. The most demoralised component of Pakistani population was its armed forces. Pakistan's leftover army structure stood shattered. But India's Prime Minister, Mrs Indira Gandhi showed unprecedented magnanimity and desire to bring peace and harmony to the region. She invited Z.A. Bhutto, who was both President and Prime Minister of Pakistan at the time, to Shimla for negotiations. Bhutto arrived in Shimla with a large high-level delegation which also included his daughter, Benazir Bhutto. After prologed negotiations across the table, the two countries signed an agreement on July 2, 1972. This Agreement, known as Shimla Agreement, appears to have been dictated by vanquished Pakistan to victorious India. Now Pakistan wants to take the equation back to pre-1971 days. Pakistan cannot have it both ways, sign a bilateral agreement and get the benefits of all the favourable clauses and then revert to pre-agreement position. And repudiate the Agreement. It is an essential principle of law of nations that none of them can liberate itself from the engagements of the Agreement nor modify the stipulations thereof, unless with the consent of the contracting parties by means of an amicable understanding. Also the Law of Treaties does not permit U.N. or any other intervention. If Pakistan is not in a mood to honour the Shimla Agreement, India will be justified to reciprocate by disowning the Canal Waters Agreement with Pakistan. The countries particularly close neighbours

cannot afford to behave as Pakistan does.

In a world where violaters masquerade peace-makers, India has to exercise its right to secure its frontiers and integrity against all uncertainties and not merely worry about hostile reaction in countries with which it has fought wars. As a free country India has a right to deploy security forces where required to ensure security. Exercising that right constitutes true sovereignty.

DINANATH RAINA

Chapter-1

Rejoinder To Alastair Lamb

Accession of Jammu and Kashmir to India is legal, constitutional, real, permanent and final.

The Indian Independence Act, 1947, did not propose or contemplate that Indian Princely States, after the lapse of British paramountcy or suzrainty, would become independent and thereby disrupt the unity of India. The Mountbatten Plan of June 3, 1947 gave option to the rulers of these Princely States to accede to either of the two Dominions, India or Pakistan. Sir Hartley Shawcross, Attorney-General of England explaining the position in British Parliament observed: "We do not propose to recognise the States as separate international entities on August 15, 1947". Clement Atlee, Prime Minister of England also observed thus: "A feature running through our relations is that they (States) have received no international recognition of independence of India as a whole. They are part of geographical India and their rulers and people are imbude with patriotism no less great than that of their fellow Indians in British India. It would be, I think, unfortunate if owing to the severence of their paramountcy relations with the Crown, they were to become islands cut from the rest of India. The termination of their existing relationship need have no such consequences. It is hope of His Majesty's Government that all the States will, in due course, find their appropriate place with one or the other Dominion within the British Commonwealth".

On June 15, 1947, the All-India Congress Committee had delcared that it did not admit the right of any Princely State to declare independence and to live in isolation from the rest of India, that would be the denial of course of history.

The Pakistan resolution of 1940, adopted by the All-India Muslim League, was not made applicable to the native Princely

States and no reference was made to these States. Nawabzada Liaqat Ali Khan, General Secretary of the Muslim League and Prime Minister of Pakistan issued the following statement on September21, 1947: "The correct position is that the Indian Independence Act, 1947, has left all Indian States completely free to join either one Dominion or the other. Legally and constitutionally, there can be no question of putting limitations on this right of the States in this respect. Muslim League leaders before August 15 and official spokesmen of the Pakistan Government thereafter, had publicly declared their agreement with this view and had rigorously stood by it. No objection has been raised by Pakistan to any State acceding to the Dominion of India".

Immediately after Kashmir's accession to India on October 26, 1947, Lord Mountabatten flew to Lahore on November 1, 1947 to meet Pakistan Governor-General, Mohammed Ali Jinnah. He asked Jinnah if he stood rigorously by his Prime Minister's statement regarding accession of Princely States, Jinnah admitted that it represented the legal position. In fact, Jinnah had deputed his Military Secretary, Major Shah to Srinagar to convey to the ruler of Kashmir, Maharaja Hari Singh, the official Pakistani stand on powers of rulers of States regarding accession of their States to India or Pakistan. Major Shah conveyed to the Maharaja in the second week of October, 1947 that it was Pakistan Government's stand that he (Maharaja) alone had the power to give accession and that he need not consult anybody.

The Maharaja of Jammu and Kashmir wanted some time for taking a decision and, therefore, offered to have a stand-still agreement with both India and Pakistan till he could decide about accession. While India's response was delayed, Pakistan instantly agreed and signed the Stand-still Agreement with the Ruler of Jammu and Kashmir.

However, in total breach of this Agreement, Pakistan inflicted unprecedented economic squeeze on Jammu and Kashmir. She not only discontinued all fresh supplies to the State but stopped even those supplies, which were in transit having been

despatched to the State from Indian cities of Bombay, Calcutta and other places. All the essential commodities like petrol, diesel, Kerosene, salt, cloth, wheat, medicines etc. were held up by the Pakistan Government at Rawalpindi and Sialkote. Rice (four month's quota, wheat of two months), 189 bales of cloth, ten wagons of salt, almost the entire quota of 3,84,000 gallons of petrol was held up. Immense quantity of goods of private traders were also held up. The postal system was kept paralysed. Savings bank accounts were tied up. Postal Certificates were not cashed and cheques on West Punjab banks were not honoured. The motive was to create anarchy, violence and misery before its planned invasion took place. Large number of State's vehicles were held up at Rawalpindi, Wazirabad and other places. The railway line between Sialkote and Jammu was closed. Frantic appeals were made by the State Government to the Pakistan authorities to release some of the essential commodities at least on humanitarian grounds. But there was no response, Gloating over the misery, Pakistan's ruling Party, Muslim Leagues official organ and leading daily paper, "Dawn", Karachi, in its issue of October 16, 1947 wrote: "The Kashmir Government is disintegrating. It has already suffered a loss of Rs. 2 crores out of total budget of Rs. 4 crores. The tremendous inflation in the prices of the necessities has created a feeling of feverish restlessness among the masses. The revenues from forests and customs have almost come down to zero". Simultaneously with economic squeeze, Pakistan launched border raids, by first inciting and arming ex-servicemen living in the villages on both sides of the border and later by pushing tribesmen into the State.

From the first week of September, 1947, border raids began to take place from Pakistan into the border areas of Jammu region mostly in Poonch area. The Jammu and Kashmir State used to get its requirements of armaments and ammunition from the Army Supply Depot at Rawalpindi. The Pakistan Government abruptly and totally stopped these supplies immediately after coming into existence. The J&K Government, therefore, requested the Government of India for these supplies. The matter was

still under the consideration of the Indian authorities when the grave situation of naked invasion overtook everything on October 22, 1947.

The J&K Prime Minister, Mehr Chand Mahajan sent a cable to Clement Atlee, Prime Minister of Britain detailing the raiders' attacks and economic blockade and requesting him to advise Pakistan to treat Jammu and Kashmir with fairness and justice "consistent with the prestige and good name of British Commonwealth of which she claims to be a member". On October 18, 1947, the State Prime Minsiter despatched a stiffly-worded telegram to Pakistan Governor-General, Mohammed Ali Jinnah and the Prime Minsiter, Nawabzada Liaqat Ali Khan requesting them once again to stop raids into the State from Pakistan territory and release supplies. The telegram concluded that if Pakistan did not stop these raids, the State Government would be compelled to seek friendly assistance in fulfilling its basic duty of protecting its people and frontier.

Internally, Pakistan had been mobilising unruly and turbulent tribesmen of North-West Frontier Province particularly Mahsuds, Afridis, Vana Wazirs, Swatis and Bernewal tribes. Afridis and Mahsud tribesmen of Tirah and Waziristan were really formidable. Britain had considered them as "among the hardest fighters in the world". British Indian Government had been paying about 70 million rupees in the shape of subsidies to various tribal chiefs in return for the goodwill. All this was done very quietly. For centuries, these tribesmen had believed that Quran was the highest law and to defend it, nay, more to spread it, was their sacred duty. Boundaries were no obstacle to them, certainly not in the sense of international law. These tribesmen along with personnel of regular army in plain clothes were pushed into Kashmir. This combined force under the code name of "Operation Gulmarg", was devised, planned and led by Major-Genral Akbar Khan of the Pakistan Army under the assumed name of 'General Tariq' assisted by Brigadier Sher Khan. Abbatabad town in Pakistan was the launching pad for the raid. Every Pathan tribe was to send one "Lashkar" (armed bands)- of one thousand tribals to Abattabad.

Pakistan's Army Commander-in-Chief was General Sir Frank Messervey. Sir George Cunningham was the Governor of North-West Province. Gen. Douglas Gracy was Chief of the Pakistan Army. On the Indian side were Gen. Rob.M. Lockhart and Gen. Sir Francis Robert Roy Bucher. Air-Marshal Commanding the Royal Air Force was T.W. Elmhirst and the Rear Admiral of the Royal Navy was T.T.S.Hall. Marshall Sir Claude Auchinclick was the Supreme Commander in charge of administering partition of the Indian Army. All of them had served the combined Indian Army and were close to one another. They all were privy to" Operation Gulmarg".

The code name, "Tariq" was clevely chosen by Gen. Akbar Khan to rouse passions with reference to Islamic history. "Tariq" was the name of Moorish hero who had defended Islam in Spain over thousand years before. These tribesmen had already beseiged towns of Mirpur, Poonch, Kotli, Jhanger, Nawashera and no Hindu or Sikh was safe before their barbarous fury.

On the morning of October 22, 1947, the main column of the raiders crossed the frontiers from Garhi Habibullah and attacked Muazffarabad. This district headquarters town and its surrounding villages had a substantial Hindu and Sikh population. The entire population was annihilated. Hundreds of women jumped in the river Jhelum and river Kishenganga. Hundreds of Young women and girls were taken away and either sold in the streets of Rawalpindi and Peshawar or forced to live and die as slaves in the mountain fastnesses of the tribal territory. The avalaunch of looting, pillaging, burning and abductions pushed irresistably forward along the Jhelum Valley road and reached Baramulla. However, their march had been slowed down by the gallantry resistence offered by Brigadier Rajindra Singh and his handful of soldiers.

There was a Catholic Christian Convent, a College and hospital named after St. Joseph, run by the nuns of the Franciseon Order of Mary in Baramulla. When some prominent residents of the town met the head of this Cathedral, Col. Dykes for guidance in the face of raiders' advance towards the town, he said with an

assured voice, "Keep to the left and let them march". But the first victim of raiders' brutality was this entire Christian Mission including Rev. Father and Mother Superior and other nuns. "Zar Bidam", "Zan Biddam", (give us money, give us women) was the cry of the ferocious tribal raiders.

Quoting Father Shanks of St Joseph's Convent, the Daily Express, London, stated on November 11, 1947:

> "The tribesmen came shooting their way down from the hills from both sides of the town. They climbed over the hospital walls from all sides. The first group burst into a ward firing at the patients. A twenty year old nurse, Phelomena tried to protect a Muslim patient whose baby had just been born. She was shot dead first, the patient next. Mother Aldetrude rushed into the ward, knelt over the nurse and was at once attacked and robbed. The Assistant Mother, Tarosalina saw a tribsman point a rifle at Mother Aldetrude and jumped in front of her. A bullet went throughTorosalina's heart. At that moment. Col. Dykes, who had assured us we would not be attacked, raced from his room a few yards along the terrace to get the Mother Superior out of danger, shouting at the tribesmen as he ran. But the Mother Superior fell shot and Col. Dykes collapsed beside her with a bullet in the stomach. Mrs Dykes ran from her husband's room to help him. She too was shot dead. While this went on, Mr. Geo Boretto an Anglo-Indian was killed in the garden before nine nuns. Then the nuns were lined up before the firing squad. The raiders entered our Church, desecrated it, destroying all the sacred images, the Tabernocle, vestments and candle. A raider who came for medical treatment at the hospital later had his hand covered with rings. On being asked where he got them, he said: "I killed fifteen men to get them".

Finding no means to protect the State and its people from utter destruction and annihilation, the Maharaja had begun negotiations with the Government of India for accession and urgent military intervention. The Government of India was not inclined

for hasty action. But keeping in view the ground situation, it agreed to State's accession. Maharaja Hari Singh signed the Instrument of Accession on 26th October, 1947, which was accepted by the Governor-General of India

Thus, the straightforward legal position is:

The British Government passed the Indian Independence Act, 1947, vesting the powers of accession solely in the princely rulers. Subsequently, Maharaja Hari Singh of Jammu & Kashmir exercised this right under the said Indian Independence Act and acceded to India and the Instrument of Accession was accepted by the Governor-General of India, Lord Louis Mountbatten.

On the morning of October 27, 1947, a battalian of Indian Army was airlifted to Srinagar. India's Prime Minister, Jawaharlal Nehru speeking in Indian Constituent Assembly (Legislative) on November 25, 1947 said:

> "... On October 24, 1947, we heard that large armed bands consisting of both tribesmen and ex-servicemen from the Frontier had broken through Muzaffarabad and were marching to Srinagar. These raiders were equipped with bren guns, machine guns, mortars and flame throwers and had at their disposal large number of transport vehicles. They moved rapidly down the Valley, sacking and burning and looting all along the way.... We were asked at this stage both by the Maharaja and Sheikh Abdullah to accept the accession of the State to the Indian Union and to intervene with the armed forces of the Union...".

The above is, very briefly the story of accession of Jammu and Kashmir to India. Now what is the contention of Pakistan? The contention of Pakistan is that many border villages in Poonch area of the State had risen in revolt, and therefore, the ruler had lost his authority. This contention is most untenable. The ruler had all the authority, right and duty to curb the revolt and ensure that his writ ran throughout the territory of his State. He was, at that period of time, the legal sovereign and source of all constitutional power. No rebellion or forced usurpation by the people in any area, was recognised as the legitimate action under the

law. Had that been the case, there would have been no India and Pakistan but hundreds of separate units with lawless people under the thumb of local war lords. Rebellion was not the monopoly of the Muslims of some Poonch villages in J&K. People in any part of India and the new country of Pakistan could have risen in revolt had there been an iota of legality or recognition in that.

The city of Lahore had overwhelming Hindu and Sikh population and they resisted Pakistani occupation of the city. But on the morning of August 15, 1947, the Pakistan Government, which had come into exixtence the previous day, deployed crack Bluch Regiment of the Army to crush the resistence and got the city cleared of the Hindus and Sikhs. This action was justified because the law had awarded the city to Pakistan. Even those areas to which the British Government had pledged to give independence, could not be given the same, in view of the new political dispensation as envisaged in the Indian Independence Act. In 1946, India's Viceroy, Lord Wavel visited Landikotal in Khyber Pass. He told the Pakhtoons there: "On behalf of His Majesty's Government, I give you an assurance that coming political changes in the Indian sub-Continent shall not affect your right to freedom". In fact, the jirgas of the tribal belt of North-West Frontier Province had never been under any effective control of the Government either Provincial or Central. However, when the British Government granted freedom to India, these areas automatically came under the control and jurisdicion of the New Country of Pakistan and were made an integral part of that country. Whatever resistence was offered by these tribes was crushed with an iron hand by the Pakistan Government. No eye brows were raised because the Pakistan Government had the legal soverignty over these areas.

Another instance is that of Gilgit and Dardistan. The Jammu & Kashmir Government had leased the civil and military administration of Gilgit to the British Government for a period of 60 years by an agreement signed on March 26, 1935. However, as the British intended to leave India, the British Government announced in February, 1947 that the lease will be terminated not

later than June, 1947. The area was retroceded to the J&K Government accordingly. The Maharaja appointed Brigadier Ghansara Singh as Governor of Gilgit region. The British Political Administrator of Gilgit Lt. Col. Bacon handed over control of the Gilgit region to Brigadier Ghansara Singh on August 1, 1947. The British Government did not hand over the area to the local rebellious groups which were very vociferous and hitting but to the legal sovereign, Maharaja of Jammu and Kashmir.

When British paramountcy lapsed on August 15, 1947, the sovereignty in Jammu and Kashmir had not been transferred to anti-State rebellious elements. The Indian Independence Act did not give any type of legitimacy whatsoever to local rebellious groups anywhere, be it Poonch, Telingana, Nagaland, Lahore, N.W.F. Province or Bluchistan. The Western historian, Alastair Lamb has also been harping on the same point of Pakistan.

Alastair Lamb has concocted another point. He says that the Indian Army had been sent to Kashmir even before the Instrument of accession was signed by the Maharaja. He has constructed a cock and bull story to justify his patently false view. But, even assuming for the sake of argument that this was the case, India had every right to do so. The Government of India had been a continuing body through the changes in India's constitutional status. After the power had been transferred into Indian hands, the new Government inherited not only the liabilities and duties of the old Government but also its assets and its rights. She continued to be a member of the United Nations without a fresh application. It was as much her right as it was her responsibility to protect not only the States, which had acceded to India but also those which had not acceded to Pakistan. Thus, even if Kashmir had not acceded to India she should have still been obliged to protect the People of Kashmir against aggression and forced annexation. Kashmir had at no time been recognised as a soverign State under international law. It had always been considered as an integral part of India. Partition of the country made no difference to India's responsibilities in Kashmir as long as it had not acceded to Pakistan. India was not only fully entitled but

bound by duty to defend Jammu & Kashmir even without the formal accession of the State. The accession was insisted upon by the cousin of the British King and Crown representative in the Dominion of India, Lord Lous Mountbatten.

The United Nations Secretary-General, Trygvia Lie issued the following statement vide U.N. Press Release dated August 12, 1947:-

> "Kashmir was not a neighbouring area, it was a part of India. As the Government which, by law has succeeded the British power in Delhi, the Government of India had a responsibility regarding Kashmir so long as it did not take a decision about accession. This subject was discussed at the United Nations and the expert legal opinion had stated the position: "The situation is one in which a part of the existing State breaks off and becomes a new State. On this analysis, there is no change in the international status of India. It continues as a State with all treaty rights and obligations and membership of United Nations. The territory which breaks of will be a new State".

The native Indian States which included Jammu & Kashmir had no international relations whatever either between themselves or with foreign States. The rulers of these States did not have any privileges, which according to International Law are due to the heads of States abroad. The Indian States had no diplomatic intercourse with States and powers outside India.

The treaties with the British Crown supposed to have come to an end on 15th August, 1947, were non-existent. The treaties had been entered into by the Government of India not by His/her Majesty's Government or by the Crown. As the Government of India was a continuing authority, the situation could alter only after a particular State had taken a decision of accession to new country of Pakistan. As long as this did not happen, there was no change in the basic situation as stated above. Paramountcy of the British Crown existed independently of treaties and engagements. So section 33 of the Government of India Act, 1915 stipulated that the rights and obligations under the treaties with

Indian States had been transferred to the Government. The word 'India" in Section 33 meant, according to the General Clause Act, 1897, not only British India but also the territories of Indian States and it was clear that superintendence, direction and control of the civil and military Government of the States as much as that of British India vested in the Governor-General in Council. Indian States were obviously included in the definition of British India in Section 3, sub-section, 7 of the General Clauses Act, 1897. Under section 33 of the Government of India Act, 1915, the rights and obligations under the treaty with the Indian States had been transferred to the Government of India. It is not in accordance with historic fact that when the Indian States came into contact with the British power, they were independent or possessed full sovereignty or status. None of the States including Jammu and Kashmir ever held international status. All of them were subordinate or tributaries to the Mughal empire, the Maratha Supremacy or the Sikh kingdom and dependent on them.

The relationship of the Government of India with the States was not merely a contractual relationship resting on treaties, it was a living and growing relationship of history, theory and modern fact.

International Law had authorised the Dominion of India right of intervension'. The residuary Government of India had the right to march its troops through the territories of Indian States and was also entitled to station troops within such territories even before the States had taken a decision on accession.

After the State's accession to India on 26th October, 1947, Jammu and Kashmir became an integral part of the Indian Union in law and in fact. There was no ambiguity about this. As a constituent part of India, Kashmir was no longer negotiable and its status could not be called to question on the plea of "provisional accession", which was traversity of facts. The acceptance of accession by India made it complete and final. India had not precipitated anything. India followed the British procedure in initiating discussion with the whole of the national movement in Kashmir about accession. The majority population of Kashmir,

no doubt, was Muslim. But India had the Muslim population larger than that of whole of Pakistan.

The accession of Jammu & Kashmir State to India was unconditional, final and irrevocable its legality being sanctified by the signification of the ruler of the State and its acceptance by the Governor-General of India in terms of Indian Independence Act, 1947 and the Government of India Act, 1935.

After the promulgation of the Constitution of the Republic of India on January 26, 1950, Jammu & Kashmir came under the perview of Schedule-I of Article-I of the Constitution. The Constitution of India does not permit secession of any area under any circumstances whatsoever although adding to the territory is permissible.

The parallel can be drawn from the United States of America. In 1861, various States of America acceded to the American Union. In his first inaugural address, Abraham Lincoln said: "In contemplation of universal law and of the constitution, the Union of these States is perpetual". The question of the finality of accession again came up before the U.S. Supreme Court in 1868 in the case of Texas Vs. White when the court said: "When Texas became one of the United States, she entered into an individual relation".

In the case of Jammu & Kashmir, the acceptance of the accession was its incorporation into the political body and it was complete, final and perpetual. Allan Compbell Johnson, Press Secretary to the Viceroy of India during the relevant period has said: "The legality of Kashmir's accession to India is beyond doubt. It should be stressed that accession has complete validity both in terms of British Government and Jinnah's expressed policy statement". Finality statutorily cannot be made contingent on conditions imposed outside the powers of the statute. Any rider which militates against the finality is clearly ultra vires. The Kashmir leader, Sheikh Mohammad Abdullah in his autobiography, "Atish-e-Chinar" says: "The Instrument of Accession signed by Hari Singh was the same as those signed by rulers of other princely states. According to it, once accepted, accession was full, final, unconditional and irrevocable".

Mr. Warren Austin, the U.S. representative to the United Nations stated in the U.N. Security Council in 1948 that with the

accession of Jammu & Kashmir to India, its sovereignty had gone to India and exercised by India.

India's Prime Minister, Jawaharlal Nehru reiterated the position in Indian Parliament on August 7, 1952. He said:

> "There still seems to be a good deal of misunderstanding about Kashmir's accession to India. The other day I said in this House that the accession was complete in law and in fact in October, 1947. It is patent and no argument is required because accession of every State in India was complete on these very terms by September in that year or a little later. All the States acceded in these basic subjects, namely, Defence Foreign Affairs and Communications. Can anybody say that accession of any State in India was incomplete simply because they acceded in these basic subjects, namely, Defence, Foreign Affairs and Communications. Of course not. It was a complete accession in law and in fact. So was the accession of J&K State in law and in fact by the end of October, 1947. It is not open to doubt or challenge. When United Nations Commission accompained by legal advisers and others came here, it was open to them to challenge it. But they did not because it was quite clear to them and to their legal advisers that there could be no question about the legal validity of the accession".

Kashmir's accession to India was not an isolated exclusive or an independent event. It was a part of an overall poltical settlement for the future of the Indian sub-continent through the Indian Independence Act, 1947, which the British Government implemented after prolonged consultations with the Indian National Congress, All-India Muslim League and Indian Chamber of Princes. On the basis of this Act, a new country of Pakistan was also established. Those who question the legality and finality of Kashmir's accession to India, are challenging the creation and establishment of Pakistan which was also part of the same overall political settlement. Both the components, Kashmir's accession and birth of Pakistan are products of the same settlement. The rationale for creation of Pakistan was a political compromise for

granting independence to India. The compromise and settlement also included the framework for the disposal of six hundred and add Princely states. The accession of Kashmir to India derives its legality, legitimacy and finality from the same source from which Pakistan derives its birth and right to exist. Therefore, those who call the whole of State of Jammu and Kashmir as disputed are cutting the very roots of Pakistan. They are suggesting that Pakistan be demolished and status-quo ante, as it exixted on August 14, 1947 be restored.

The internationally approved law of transfer of power has to be viewed in its entirety and not in convenient fragments. Any re-opening of the issue of accession of Jammu & Kashmir State to India would result in questioning the legitimacy of the Government of India Act, 1935 and the Indian Independence Act, 1947. It implies unravelling the constitutional and legal basis of the creation of the dominion of Pakistan and the manner in which the affiliation of the six hundred princely States was secured.

Chapter-2

Startling Revelation: Non-Existent U.N. Resolutions

As the tribal raid of Jammu & Kashmir turned into a full-scale India-Pakistan war, India sent a letter to the Prime Minister of Pakistan on December 22, 1947, in which acts of aggression of Pakistan and the aid given by her to the invaders were briefly stated and the Government of Pakistan was requested to take urgent steps so that war would not prolong. Government of India expressed its earnest desire to live in terms of friendship with Pakistan and hoped that Pakistan would consider the consequencs of tragic goings on. Pakistan was assured that India was eager and determined to live in peace with her. No reply was received in spite of two reminders. India also informed Pakistan that she intended to take the matter to the United Nations Organisation if Pakistan did not respond.

On December 30, 1947, India made the following reference to the U.N. Security Council:

"In order that objective of expelling the invaders from Indian territory and preventing them from launching fresh attacks, Indian troops would have to enter Pakistan territory; only thus could the invaders be denied the use of bases and cut off from their sources of supplies and re-inforcements in Pakistan. Since the Government of India are entitled in International Law to send their armed forces across Pakistan territory for dealing effectively with the invaders. The Government of India ever anxious to proceed according to the Charter of the United Nations, desire to report to the United Nations. They feel justified in requesting the Security Council to ask the Government of Pakistan:

(1) to stop Pakistan Government personnel-military and civil participating in or assisting invasion of J&K State;

(2) to deny to the invaders:
  (a) access to and use of territory for operating against Kashmir;
  (b) military and other supplies;
  (c) all other kinds of aid that might tend to prolong the present aggression.

The U.N.O. was just a two and a half year old baby when India made the above complaint. U.N. Charter had come into effect on October 24, 1945. Fifty-two contries were members of the U.N. More than half of the world was unrepresented. The Security Council was 11-Member body (5 permanent and 6 non-permanent). U.N. was temporarily accommodated at Lake Success in Sanfrancisco. It had not taken an appropriate shape. All its work including the secretariat was managed and dominated by personnel from the U.S., which had provided all the infrstructure and finance. Just ended Secont World war had created two power blocks and the cold war had set in with full fury. The Organisation was totally a show-piece of Anglo-American bloc. Cold war had set the pattern of inter-State relations. The Anglo-American block considered the new Muslim country of Pakistan as their natural ally. India had turned down American overtures bluntly and had made it known that it would stay clear from cold war alignments. After bitter experience of subjugation and expoitation under imperialist rule, reaction of India was sharp. India was least prepared to follow a new lord and master whose ambition to control and dominate a post-World War-II world knew no bounds. This policy of India was not to the liking of the powers that be in Washington.

The Security Council took up India's complaint on January 15, 1948. Mr. F. Van Langenhone, representative of Belgium was the Council President that month. From day one Americans exhibited their tilt towards Pakistan. By a smart machination, the Council President with the connivance of secretariate officials, changed the title of the complaint in the agenda from "Kashmir" to "India-Pakistan problems". The chief Indian delegate, Gopalaswamy Ayyangar stronlgy protested the change. But no

heed was paid to his protests. This open partisanship created great indignation in India. There was instant reaction in the national press. In its issue of February 16, 1948, the 'Hindu' commented: "The non-objective attitude adopted by the power groups in the United Nations has caused resentment in this country. The Anglo-American powers and their satellites in the Security Council have indentified themselves completely with the Pakistan case".

Pakistan's Foreign Minister, Sir Mohammed Zaffrullah Khan vowed before the Council that Pakistan was not involved in the raid and added that it had done everything within its power to stop the tribesmen from entering into the Jammu & Kashmir State, but had been unable to stop them. With an obliging Council, Zaffrullah succeeded in submerging the simple issue into the wide squables of the sub-continent. The Security Council acquiesced in this. By changing title to 'India-Pakistan question', the Council comfoulaged the main issue. The U.S. representative, Warren Austin was instrumental in this. Austin and the British representative, Noel Baker appeared to be aggressive. Their attitude was tantamount to rewarding aggression. In its written reply to India's complaint, Pakistan in document No. 1 confessed: "A certain number of independent tribesmen and persons from Pakistan are helping the Azad Kashmir Government in this struggle for liberty as volunteers". Pakistan also complainted against India for her failure to fulfil the agreements reached in connection with the partition such as division of military stores, cash balances and other matters. Her presentation was an exhaustive account of all problems dividing the two countires. Thus, Pakistan attempted to absolve itself but all the same confirmed that tribal raid had taken place and raders' march into Jammu & Kashmir was continuing. It also confirmed that raiders were Pakistani nationals. The prime issue of invasion of Jammu & Kashmir was established.

Referring to India's plea that the Security Council concentrate on stopping fighting and bloodshed first and take up other matters later, Noel Baker said: "Would it stop the fighting if the

Security Council did what Ayyangar desired? Suppose we put this demand to Pakistan, and put it now. Would the inhabitants of Poonch and Mirpur lay down their arms? Would the volunteers from Pakistan go home? Would the tribesmen obey the summons of the Security Council and go back to their barren upland or would our action have exactly the opposite effect?" Warren Ausin made a scathing and satirical attack on the Indian delegate, exhibiting an unprecedented sense of intolerance. In arrogant tone, Austin attacked Ayyangar's apprehension of "trends" in the Council. The Argentine delegate, Arce, echoed bluntly the same feelings. It became very clear that these master members of the Security Council were not concerned with peace but only in taking revenge from India for her people's audacity to demand freedom from Britain.

The four permanent Members of the Security Council appeared determined to by-pass the primary issue and made it more complicated. The Soviet Union, the fifth permanent member appeared disinterested. Her representative, Gromyko and later on Jacob Malik abstained at times of voting. The Soviet leader, Stalin was not averse to Kashmir remaining in a melting pot. The Communists had fond hope that Kashmir may, after all, become a Communist land. Gopalaswamy Ayyangar fervently requested for adjournment of the proceedings to enable him to return and consult his Government. But his request was turned down. And if under a Command performance, the Council accepted Zaffrulla Khan's statement as gospel truth and ignored India's complaint and what it said on the floor of the Council. Thus, the Anglo-American bloc, in the very first round, used the U.N. forum to advance their interests in the cold war politics. This was wholly against the U.N. Charter. They did not want to listen anything against Pakistan. The entire proceedings of the Security Council came to this: You invade a country, spread terror, kill civilians, put your demand at the point of the gun or bayonet. Then turn round and say: 'I agree to a cease-fire provided you settle the problem of Kashmir by holding plebiscite. The Security Council fraudulently upholds the black-mail.

The 'Time', London, had, on January 13, 1948 a despatch from its special correspondent from the war front in Jammu & Kashmir. The despatch said: "That Pakistan is involved in aiding the raiders is certain. Your Correspondent has first-hand evidence that arms, ammunition and supplies are being made evailable to the 'Azad Kashmir' forces. Pakistani officers are also helping to direct their operations.... And, however, much the Pakistan Government may disvow intervention, moral and material support is certainly forthcoming".

The New York Times published on January 29, 1948 the following despatch from its Correspondent in India, Mr. Robert Trumbull: "I interviewed Mr. Haight, who till recently was the Brigadier-General of 'Azad Kashmir' Forces, in Lahore twelve days ago. But I agreed to hold this story until he let me know by Code telegram that he was leaving Pakistan. Mr Haight Said: "Gaxoline-a scarce and strictly rationed commodity was supplied plentifully to the raiders by the Pakistan authorities. Pakistan Army personnel is running the Azad Kashmir Radio station relaying messages through their own Pakistan Army receivers, organising and managing Azad encampments in Pakistan, and supplying uniforms, food, arms and ammunition, which came from Pakistan Army stores. The Azad Kashmir Provisional Government headed by Sardar Mohammed Ibrahim Khan(who is now in New York), is a "Pakistan puppet." High Pakistan Government officials, notably Premier of North-West Frontier Province, Quyoom Khan, are deeply involved in the raid".

This evidence form their own sources had no use for the committed Council members. The scales were heavily weighed against India the moment she took her case to the Security Council. Most of the Members of the Council were strangers to the Indian sub-Continent and a far fewer number among them had heard about Kashmir. Representatives of most of the countires were led by the American and British policy. In British bureaucratic circles, large number of persons were having hatred for India.

Why did the United States so openly side with Paksitan in the U.N. on the Kashmir issue? As soon as World War-II ended,

the British empire quickly liguidated. United States of America and the Soviet Union remained as two super powers. It was a clash between free market and Communism. The cold war between the two super powers began. The United States leading the Western block. On the extreme East was SEATO (South-east Asia Treaty Organisation). On the extreme West, North Atlantic Treaty Organisation (NATO), To the Western side of the Centre, Turkey, Isreal and Iran, where there was CENTO (Central Treaty Organisation which was also called MEDO, Middle-East Defence Organisation). Only Eastern side of the Centre was to be guarded. For this purpose, India, Afghanistan and Pakistan could be the best safeguards. As India refused, Pakistan became a focul country. And also, the non-aligned, non-co-operative, Russian-inclined and China-minded India was to be punished. Secondly, India should be coerced to join military alliances with her. Thirdly, India should be checked from becoming too powerful on account of its large size, resources and population. In this way, Asian powers could be kept within bounds not to be able to challenge American leadership in South Asia and East Asia. American policy-makers became very suspicious of Nehru's intentions after Communist Chinese annexation of Tibet. They vehemently disliked Nehru's propaganda of Panch Shilla. They considered it not a legitimate child of diplomacy but the illegitimate off-spring of the Sino-Indian agreement over a third country-Tibet. It was thought to be official recognition by India of the death of the autonomy of a country with which she had the closest ties from ancient times. U.S. Secretary of State, Dean Acheson had said: "Nehru's unusual gift of causing annoyance may make us blind to the importance of India". No wonder, the entire Anglo-American bloc blindly supported Pakistan in the U.N. The new born Muslim Country of Pakistan also got the blind support of Muslim countries. The U.S. State Department advocated "building up of a strong Muslim block under the leadership of Pakistan and friendly towards the U.S."., as a counterpoise to India on the specious plea that "otherwise, this country might become a successor to Imperialist Japan". Pakistan emerged as a royal camp-follower to U.S. in the very first phase of the cold war.

Be that as it may, Security Council failed in its basic duty of attending to India's complaint by not pin-pointing the guilt of aggression. Instead it pushed Kashmir into the arena of cold war. The duplicity of U.N. Security Council got exposed very soon. The Korean war broke out in June, 1950. The Council handled the two issues differently. It condemned North Korea and branded it as an aggressor. If the North Koreans had invaded South Korea so had Pakistan invaded Kashmir. Why then they were not condemned as was North Korea? Why had U.N. failed to take action against Pakistan while it had branded China also an aggressor in connection with the Korean issue. Earlier, the Security Council had condemned Yugoslavia, Albania and Bulgaria for giving assistance to the rebels fighting the Government forces in Greece.

U.N. had no power to dictate solutions, especially in issues involving territorial claims. But in the impetuous folly of adolescence, it played havoc with India's complaint.

A noted American authority, Dr. Leroy Benett has said:

"Before the Security Council resolution on Korean issue was adopted (on June 27, 1950), President Truman had already ordered the U.S. Forces to give air and sea support to South Korea.... Thus the Security Council only gave legitimacy to the (pre-planned) massive U.S. military involvement in South Korea". Thus, for all practical purposes, the U.N. acted as an instrument for furthering American diplomatic and military interests in East Asia.

Similarly in the Kashmir issue, the U.N. Security Council by- passed not only the norms but even the Charter to adopt the course as per political, diplomatic and strategic requirements of the U.S.

The U.N. Security Council did not attend to the basic complaint of India. It failed to declare Pakistan an aggressor. The U.N. Charter enjoins upon the Security Council "An action consistent with the crime of invasion". It could not succeed in its conciliatory role by brushing the ugly fact of aggression under the carpet. The mediatory efforts were doomed to failure as they

were based on inherent unethical task of rewarding a party which had committed aggression and had been exposed as a lier before the Council. It is beyond one's comprehension how U.N. could recommend ceding of territory and change the national boundaries of sovereign countries. U.N. is an international association for rendering assistance in maintaining world peace and making all efforts to save the world from horrors of war. U.N. is not a court of law which can pass judgments. It was the belief in this legitimate function of the U.N. which had prompted Jawaharlal Nehru to approach it with the plea that Pakistan should be stopped from sending raiders to Kashmir in order to avoid threat to world peace.

U.N. has no power or competence to require a Member-State to cede part of its territory to another State or a group of people in the same State in the interest of peace and security, and in the interest of promoting goodwill and co-operation among nations. However, laudable is the object of promoting the "Democratic" ideal of a "free and impartial plebiscite", as the Security Council was used for till the mid fifties, the fact is the U.N. is not and was not conceived to be concerned with the promotion of democratic ideals in the territories of its Member-States with varying idelogies and politico-economic systems. The Organisation, on the other hand, by its very universality of Membership, was desired to be an association of Member-States with varying ideologies and politico-economic systems. The most basic principle of international law is the equal claim to integrity of all States regardless of their political or social ideology. The U.N. is an institutional reflection of this basic principle.

The U.N. is a peace and order-oriented general international organisation and cannot assume upon itself the role of promoter of democratic ideals. The democratic ideals, for one thing, have a different connotation for different groupings in the United Nations. The United Nations cannot afford to be a party to attitudinal clashes of various countries having different and mutually contradictory political system. Nothing authorises the Security Council to dictate lasting solutions to underlying causes

of breach of peace or act of aggression. The International Court of Justice has said, "U.N. is not a super State. It may have an international personality. That is not the same thing as saying that it is a State. Still less it is the same thing as saying that it is a "super State" whatever the expression may mean. U.N. Security Council has only persuasive powers. It cannot coerce the Member-State to admit anything against its territorial integrity or sovereignty".

The U.N. Security Council had become so passionate and partial towards Pakistan that it did not bother at all even to adhere to the resolutions of the U.N. General Assembly. Revenge and cold war politics appeared to be only consideration for this Anglo-American-dominated Council.

U.N. General Assembly had recognised and affirmed that governments are under the obligation not to engage in hostile activities and propaganda with the intent or likelihood of inciting sedition or revolt against the governments of other States. On 3rd November, 1947, the General Assembly passed a resolution "condemning all forces of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression. On December 1, 1949, it called upon every nation" to refrain from any threats or acts, direct or indirect aimed at impairing the freedom, independence or integrity of any or at fomenting civil strife". On 17 November, 1950, the General Assembly "solemnly re-affirmed" that "whatever the weapons used, any aggression whether committed openly or by fomenting civil strife in the interest of a power or otherwise, is the gravest of all crimes against peace and security throughout the world".

Modern international law prohibits aggression by whatever weapons or means and seditious activity by one State (official or unofficial) against another. Pakistan had committed an act of aggresion by organising, encouraging, participating and tolerating on its territory, hostile elements variously called 'Maujahids', 'Faridins' whose aim was to commit acts of hostility, foment civil strife and overthrow lawfully-established Government in the

State of Jammu & Kashmir. The Security Council itself had recognised its lawfulness. The surreptitious despatch of the so-called volunteers was denied at first but admitted later. The United Nations Commission for India and Pakistan and the U.N. mediator, Sir Owen Dixon testified to the crossing of such armed personnel on a massive scale across the boundaries, thus openly violating the established rules of International Law and the principles of Nuremburg Charter.

India did not ask the United Nations to adjudge the validity of State's accession or to determine where soverignty lay. She did not seek arbitration but complained about aggression by Pakistan, which she thought might jeopardise world peace. Security Council recognised that Jammu & Kashmir was legally and constitutionally part of India and that Indian troops were in the State by right and responsibility. There is not a single paper or document in which the Security Council has held that Kashmir's accession to India was not legal and constitutional and that it should be undone. If the Council had any doubt about legality of accession, it was open to it to have referred the matter to International Court of Justice. It did nothing like that. Because there was no ambiguity about accession. It was effected under internationally approved law of transfer of power enacted by the British Government. However, due to their hidden political objective, the Anglo-American bloc countries were instrumental in not allowing the Security Council to realise the basic question before it, which was Pakistan's aggression and not the constitutional status of the State vis-a-vis India. It was not open to the Security Council to go into the issue of final disposal of the State. That was against the U.N. Charter. The Chinese delegate, Tsiang, who had been the Permanent Veto power Member of the Security Council throughout, expatiated by confessing, after 9 long years and spoke in the Security Council on January 24, 1957. He said:

> "I hope that Members of this Council today will take the time to read the records of those years. No Member of the Council ever gave serious consideration to the charge of India. There never was a proposal dealing specifically with

aggression. In fact, there was no consideration of the charge of aggression. The Members of the Council without consultation, all came to the same conclusion that the charge of aggression should be bypassed. That charge was never taken up, never sifted, never even given serious consideration".

The Security Council decided on January 20, 1948 to appoint a small group of 3 Members to investigate and mediate between India and Pakistan. One Member each was to be nominated by India and Pakistan and the third Member jointly by them. India nominated Zchekoslavakia and Pakistan nominated Argentina. The U.S. was keen to be in the team because it was its secret plan which had to be implemented. The plan was to trap India. But to exhibit a show of U.S. neutrality a drama was played. It was proposed that the third Member should be nominated by India and Pakistan jointly. The Council stipulated 10 days within which nomination was to be made. As Pakistan was privy to the U.S. intrigue, it turned down all names proposed by India and stretched the controversy till 10 days were over. As a result, at the end of 10 days, the Council President himself nominated USA as the third Member of the team. Later on, quite unceremoniously, two more Members belonging to Anglo-American bloc, Colombia and Belgium were added to the team, which was named United Nations Commission for India and Pakistan (U.N.C.I.P.). India had nominated Zchechoslavakia for the team with the expectation that he would work independently of the Anglo-American block. But unfortunately, the representative of Zchecoslavakia Josif Karbel turned to be no different than others. Zchecoslavakia was a Communist country but its Government appeared to be unaware that their representative in the Security Council was bitterly anti-Communist. Karbel fully supported the U.S. secret plan. When his mischiefs were noticed, he was immediately removed by his Government and replaced by O.Chyde. But harm had already been done to India's cause. His replacement was too late in the day.

Even though UNCIP was constituted but it was not asked to take up the job. Instead, Security Council continued debating

proposal after proposal sponsored by the Anglo-American block Members collectively and individually. There was great indignation and dismay in India. The Indian delegation returned home for consultations. However, they came back to Lak Success on 7th March, 1948. The delegation made it clear to the Council that India had nothing to do with what was going on in the Council. The reason why UNCIP was not activated was that the Anglo-American bloc was keen to bind the UNCIP to a pre-determined solution of plebiscite under its own auspices. It wanted UNCIP only to confirm this proposal. After a long adjournment, the Council met on April 21, 1948 and passed a resolution which virtually made the UNCIP useless and redundant because it gave specific direction to the Commission as to what it should propose as a solution. It appeared that interested powers that be did not want to leave anything to chance. India rejected the resolution straightaway. Pandit Nehru described the resolution unreasonable. He wondered when an investigating body had been set up how could the Council proceed with suggesting a solution even before the Commission had investigated. The Government of India rejected the resolution and sent a letter of protest to the United Nations and refused to co-operate in any implementation of the resolution. The Indian protest was prominently carried by New York Herald Tribune in its issue of April 25, 1948. Strangely, the Security Council, as if under a super directive, met again on June, 3, 1948 and passed a resolution asking the UNCIP to go into all the disputed issues which the Pakistani representative had mentioned in his speech made in January in the Council. This was extra-ordinary. India pointed out that this will rob the issue of Kashmir, which was the subject-matter of the complaint, of its urgency and importance. But India's pleadings were turned down. This issuing of directives by the Security Council created serious doubts as to the real motives of the Council Members. Surely, the Security Council is empowered to investigate and ascertain the facts for peaceful settlement of disputes or adjustment of a situation. However, it is not a "right" of the Council to give rise to any corresponding "duty" on the part of the

Member-State to facilitate such investigation. It is a power which the Council has to employ judiciously in circumstances where such investigation would be possible. The Council cannot coerce a Member-State to admit an investigatory body to function on its territory, when it has only persuasive powers to recommend measures for rectification of the wrong. To convert this power into right is to accord the Council authoritative powers in dispute settlement which is contrary to the letter and the spirit of Chapter VI of the Charter. Nevertheless, disputant States would not like to give the impression that they are trying to hide something by refusing to grant permission to investigating missions, except in extreme cases. Such considerations prompted the Government of India to receive the UNCIP though it had rejected the resolution of April 21, 1948 and June, 3, 1948, which purported to give directions to the Commission, Moreover, since the Commission was primarily required to put an end to bloodshed, India decided to allow the Commission's visit. It had, however, repudiated the Commissions's role for securing a plebiscite charaterising it as an attempt to put the cart before the horse and paying a price to Pakistan for what it had indulged in October, 1947. The resolution of April 21, 1948, was a high-handed partisanship on the part of the Council to have bound the UNCIP to a particular course even before the Commission had even paid a visit to the area and verified the facts.

The delay in sending the Commission to the sub-Continent was a deliberate act. When at last the Commission left for India and Pakistan, the situation had vastly changed and actually deteriorated. The American Member of the Commission, Ambassador J. Klahr Huddle took the command of the Commission. He alone was well-equipped with all the peraphernalia of secretariat staff and other facilities. He was also accompanied by a large team of senior American military officers numbering around 30. The other Members of the Commission were just individuals and nothing more. This pathetic situation made other Members of the Commission subservient and subordinate to the American Member for their day to day functioning. Consequently, It was the

American Member who did all the writing work and also controlled the procedures, programmes and finally the conclusions of the UNCIP. The Commission arrived in Karachi on July 3, 1948 where it had a meeting with Sir Mohammed Zaffrulla Khan, Foreign Minister of Pakistan. Zaffrulla Khan had spoken a white lie in the Security Council during initial discussions in January, 1948, by denying involvement of Pakistan's regular army in the Kashmir war. As the UNCIP was about to observe the situation on the spot, therefore, at the very outset, Zafrulla disclosed to the Commission that Pakistan army, in sufficient strength, was fighting in Jammu & Kashmir. This was bombshell. Commission members were stunned They asked Zaffrulla whether the Security Council had been informed. He replied in the negative. But it was myterious and intriguing that the UNCIP decided to keep mum on this issue. The Security Council also did not bother to take note of it. The Members admitted to one another that the presence of Pakistani troops in Kashmir had made very important material change to what the Security Council had been made to believe at far away Lake Success. Pakistan's belated confession showed that it had inflicted a grave fraud on the United Nations and had thus damned itself. In fairness, the UNCIP should have terminatesd its mission and immediately returned and officialy reported the matter to the Security Council. The Council should have held an emergent meeting to consider the grave situation. Pakistan's confession had demolished all the previous proceedings of the Council which were primarily based on Pakistan's denial. This was serious and grim dereliction of duty on the part of Commission as well as the Security Council. The latter too failed to act in accordance with the gravity of the situation. If there ever was any need to investigate and establish Pakistan's involvement in the invasion, it had ended after her own admission. But the UNCIP chose to proceed with its function despite the admitted aggressive act. The situation demanded an uncompromising attitude towards a party which was unmistakably guilty of violating the established International Law and the Charter. When a situation is brought to the Security Council's

notice, which already involves an armed conflict and when a party accuses the other of aggression and the latter(while denying at first its complicity, pleads at the same time its inability to prevent the armed raids) counter charges with aggression, elsewhere, the Council has no option but to treat the original complaint as substantially verified and take suitable action leaving the other matter for separate action. But it has no option to treat the whole thing as a "dispute" or "situation" within the meaning of Chapter-VI of the U.N. Charter. Whatever the tone of reference and whatever the provisions under which the reference is made, the Council has to take action. But nothing like this was done.

After three days stay in Karachi, the UNCIP arrived in New Delhi. On July 13, the Commission invited Girja Shankar Bajpai, Secretary-General of the Ministry of External Affairs to ascertain Government of India's views on the problem. Mr Bajpai informed the Commission of the utter disappointment and dissatisfaction of India with the Security Council's proceedings, where in the six month' debate that had followed, the issue had got lost in the power politics of cold war. He added: "What was going on today was an undeclared war between India and Pakistan". He reproached the Security Council for having ignored moral and legal aspects as also the ground reality in Jammu & Kashmir. Continuing he cautioned the Commission: "India attached the highest importance to the declaration of Pakistan's guilt, if this guilt were proved, to Pakistan being directed to do what, seven months ago, we had asked the Council that Pakistan should be asked to do. If the future of Jammu & Kashmir was to be determined by the arbitrament of the sword, then I should like the Commission, as realists, to recognise that the offer of plebiscite could not remain open. If Pakistan wanted a decision by force and that decision went against Pakistan, it could not involve the machinery of the United Nations to obtain what it had failed to secure by its chosen weapon of force. The sands of time are running short, if the problem is not solved by reason, the sword will find the solution".

After ending the visit to the sub-Continent, UNCIP embarked on an intriguing endeavour. It did not submit any report, proposal or recommendation to the Security Council. It did not inform the Council what it had investigated. Instead the 5-Member team, on its return, stayed in Geneva and adopted a resolution on August 13, 1948 and another resolution on January 5, 1949. This was unprecedented. A small team deputed to mediate and investigate on the trouble spot, in a blatantly partisan manner, suggested a detailed procedure for disposal of the State of Jammu & Kashmir and that too not by way of a report but through a resolution on "take it or leave it basis". In an equally blatant partisan manner, the Security Council tactfully and silently began to treat these resolutions as the resolutions of Security Council. It began to commend these resolutions till the idea stuck fully that these were called U.N. Security Council resolutions which surely and certainly they were not. It is these two resolutions only that India had accepted subject to many conditions and "ifs" and whens", which the Commission had agreed and accepted in writing. India was fully aware that these were not U.N. Security Council resolutions but of a mediating team and could never be binding. Five members constituting an investigating team, sitting in a hotel in Geneva could not pass a resolution on behalf of United Nations Security Council. A Security Council resolution has to face a specially exhaustive and detailed procedure for being passed. If one permanent member raises his negative hand, the resolution is killed. The action of the UNCIP was a dubious and conspiratory device undertaken at the behest of the U.S. lobby for avoiding a probable Soviet veto in the Security Council. It is a fraud and betrayal of United Nations Organisation when some separatists from Kashmir call these resolutions of UNCIP of August 13, 1948 and January 5, 1949 as U.N. resolutions. It is these two resolution only which had proposed a plebiocite. (The Security Council never even in subsequent meetings considered them for adopting or otherwise. As a command performance, in subsequent meetings, it commended them and recommending them for implementation. Never

were these resolutions formally put to vote in any of the Security Council meetings. Those who call them U.N. Security Council resolutions should know that the U.N. Security Council never met on August 13, 1948 or on Janurary 5, 1949. Time has come when this bluff should be called and exposed. It is a hoax and fraud to say that the Kashmir problem should be solved according to U.N. resolutions. This is the refrain of the separatists. Let them know and understand fully and finally that there are no U.N. resolutions proposing a plebiscite for Kashmir.

If the Pakistan National Assembly appoints a 5 Member team to investigate and mediate between the Sindh Government and Mahajir Qaumi Movement (MQM) in Karachi. And that team adopts a resolution proposing that a plebiscite be held in Karachi under U.N. auspices to decide Karachi's future, will this resolution be deemed to be the resolution of the Pakistan National Assembly? Acceptance of a recommendatory resolution of an investigating agency by a Member State cannot be deemed to create an everlasting treaty commitment. The resolutions of UNCIP were not binding per se. An investigating body appointed by the Security Council could not exercise the powers of the Council itself. The Security Council had created a subsidiary organ to investigate the dispute or situation, which was to act under its authority. It was further authorised to function as a mediatory organ, without interrupting the work of the Council. Finally it was enjoined to keep the Council informed of its activities and of the developments of the situation. A subsidiary and subordinate organ thus created by Security Council, could not be deemed to have powers of the Council itself. It would have been in order to have presented these resolutions as tentative proposals subject to negotiation, modification and finally for consideration and decision by the Security Council. This was not done. The U.N. Security Council was a hand-made toy of the Anglo-American bloc. The four permanent members belonged to this military block. During the 28 months since 1948, the non-permanent members were Argentina, Belgium, Canada, Colombia, Syria, Egypt, Cuba, Equador, Brazil, Holland, Turkey and at later period Lebanon, Greece, Chile and Norway. All these

countries without exception including Egypt and Cuba (pre-revolutionary) were American allies and stooges at that time. The grand conspiracy can be understood by just one fact. The Security Council putting cart before the horse even nominated a Plebiscite Administrator and he immediately took over in New York: Although under the UNCIP's own resolution, the Administrator was to be formally appointed by the Government of Jammu & Kashmir and should have belonged to some neutral country. But Pentagon was in command and they appointed a top U.S. military person, Chester W. Nimitz, Fleet Admiral, U.S. Navy and former Commander-in-Chief of the Pacific Fleet and Pacific Ocean Area in Second World War. He immediately began to draw fabulous salary and all-pervading perks and continued doing so for several years. Finally, the U.N. Secretary. General, Dag Hammarskjoled detected the grave irregularity and removed him immediately.

Mr. O. Chyde the new representative of Zchechoslovakia, who had replaced Josif Karbel in the UNCIP, had found that the Commission was preparing a highly tendentious report at the behest of U.S. military advisors. He submitted a separate report in which he thoroughly exposed the whole work of the Commission, of the Secretariat of United Nations and lifted the veil from the totally partisan approach of America and Britain. Fearing further embarrassment, the Security Council terminated the UNCIP wide its resolution dated 14the March, 1950. Its resolutions died along with it because their implementation was wholly dependent on the continued existence of the Commission which had earmarked a decisive role of itself in this regard.

India had forcefully opposed and rejected all the resolutions of the Security Council. India's Prime Minister, Pandit Jawaharlal Nehru condemned the resolutions as highly objectionable, "a challenge to India's self-respect". At a Press Conference on June 11. 1951, he stated:

> "The United States and Great Britain have completely lost the capacity to think and judge anything. No organisation and no country has any business to interfare in what is done in Kashmir by India.... So far as we are concerned we will tolerate no non-sense about Kashmir came what may... The whole thing is fantastic non-sense".
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> (The Hindu, Madras June 12, 1951)

COLOMBIA'S DELEGATE'S REVELATION

In the 12th year of the Security Council, in its 768th meeting held on February 15, 1957, the delegate from Colombia Mr Urrutia, who had been a Member of United Nations Commission for India and Pakistan (UNCIP) as a nominee of Pakistan, revealed how the UNCIP had functioned with open partiality towards Pakistan. Mr Urrutia saids :

"The situation which the Commission found on its arrival in Pakistan was this: Pakistan had opposed any solution that did not involve explicit provisions concerning the plebiscite. India, on her part, refused even to consider the idea of a plebiscite until hostilities ceased and Pakistan forces had withdrawn. The Commission managed to bring about agreement on the cease-fire and the truce as a bridge between those two positions. What was arrived at, therefore, was a compromise solution whereby it was possible to elicit an offer from India to submit the final disposition of Kashmir to a plebiscite. Two points have to be made clear, however; First, the Commission accepted the sovereignty of the State of J.&.K. as a fact and avoided entering into a discussion of the legality and illegality of the accession which meant that it recognised the de facto sovereignty of India. Secondly, the Commission never recognised the legality of the presence of Pakistani troops in Kashmir. These points must be stressed in order to appreciate why the Commission *ordered* the complete withdrawal of the Pakistani forces but only *requested* India to withdraw part of its forces while permitting it and giving it special rights—to maintain internal order and take charge of external defence. For the same reason, the Commission, when the idea of Plebiscite was discussed, was the first to recognise that Pakistan had no right to take part in drawing up the rules and regulations of the plebiscite, except in an advisory capacity whereas India was recognised as having the right to be consulted. It was also agreed that the Pakistani forces would be withdrawn completely and definitely whreas partial withdrawal of the Indian forces was subject to consultation with the Commission".

The delegate of Colombia, who was a leading Member of UNCIP also confirmed the assurances given by the Chairman of the Commission, Mr Lozano to the effect that India's offer of plebiscite, in the Commission's view would not entail an unconditional commitment if the first and second parts of the resolution of August 13, 1948 were not carried out. He also pointed out that the Chairman of the Commission was unwilling to discuss the legality or otherwise of the accession and was content with recognising the sovereignty of the State de facto. This coupled with the letter of the Chairman to the Prime Minister of India dated August 25, 1948 confirming the Indian interpretation (that the Commission was not competent to recognise the sovereignty of any authority over the evacuated area other than that of J&K Government) leaves no room for doubt as to the locus standii of Pakistan in the Kashmir question". In the same speech, Mr Urrutia re-iterated that the Commission at no time had intended legal battles to win in the negotiations. It was, according to him, a purely political compromise. UNCIP hammered an agreement between the parties which was subject to many "ifs" and "whens". In fact, UNCIP itself punctured its formula when it submitted its report on November 9, 1948 and informed the Council vide para 40 of this report that "the Pakistan Army had at that time three brigades of its regular troops in Kashmir". Reporting failure of its mediatory efforts, the Commission noted in its third interim report what it called a "major change" in military situation brought about by the Azad Kashmir movement "whose fighting forces today number some thirty-two well-equipped battallions" and that Pakistan had used the period subsequent to cease-fire "to consolidate its position in the 'Azad' territory". (4th year special suplement No 7, annex-12, para 203, 225).

That was enough to release India of its so-called commitment about a plebiscite. Plebescite language was the third part of the resolution. Essence of the resolution were first two parts which insist on quiting of hostile elements and all armed men and Pakistani Army from the State of Jammu and Kashmir, as it existed on August 15, 1947.

The massive violation by Pakistan in 1965, first by armed infiltrators and later by Pakistani troops across the cease-fire line, duly and regularly reported to the U.N. Security Council, by the Chief of the U.N. Military Observers' Group, Lt. Gen. R.H. Nimu, must be deemed to have erased all the obligations, if still valid, flowing from UNCIP resolution of August 13, 1948 as far as India was concerned. After the September, 1965 cease-fire, India and Pakistan both rejected the U.N. Security Council's withdrawal proposals. Instead the parties went out of the United Nations to work out a bilateral treaty on the subject at Tashkent, the capital city of Uzbegistan. The Tashkent Declration envisaged pull-back to August 5, 1965 position as a fresh cease-fire agreement. No mention was made of the 1949 cease-fire line. Later in 1972, Pakistan and India signed an Agreement at Shimla by which the cease-fire line was demolished, its U.N. Observance of Truce was terminated and a new border line named Line of Actual Control (LAC) was demarcated. Thus, even Part-I of the UNCIP reolution of August 13, 1948 disappeared and was replaced by a new Agreement arrived at bilaterally outside United Nations. This wiped out all the traces of UNCIP resolutions even notionally although practically they had withered long back.

The Security Council finally met on 24th May, 1964 to consider the Kashmir issue. In this meeting, the Council unanimously decided to authorise the President of the Council to wind up the sixteen-year old debate on Kashmir by making a consensus statement on behalf of the Council. The President of the Council made the statement requesting the two countires to end the controversy by mutual negotiations. He further stated that if the two countries mutually agreed and made a joint request to the U.N. Secretary-General for any assistance, he may kindly offer the same. On behalf of the Council, the President reiterated that this offer of assitance by the Secretary-General should also be preferably avoided as he feared that any third party interference might complicate the issue. Thus, the curtain was dropped on the Kashmir issue at the U.N. When the Seeurity Council met in September-October, 1965 to discuss India-Pakistan conflict, it

decisively, as a matter of policy and in view of its decision of May 24, 1964, declined to use word "Kashmir" in its resolution.

It is, therefore, very clear that

1. the United Nations Security Council never passed any resolution, whatsoever, on August 13, 1948 and January 5, 1949 proposing a plebiscite in Kashmir and that there are no U.N. resolutions on Kashmir which were to be implemented.
2. Thtat the unanimous consensus statement made by the Chairman of the U.N. Security Council on behalf of the Council in its meeting on May 24, 1964 wiped out all earlier resolutions on the Kashmir issue. The Council unanimously decided that the issue should be discussed and solved by India and Pakistan through bilateral negotiations preferably without any third party involvement, outside the U.N.

Chapter-3

Rejoinder to International Commission of Jurists

The right of self-determination applied to India as a whole and was exercised in 1947 when the colonial power, the British Government granted independence to India and carved another independent country of Pakistan. Self-determination is not a continuous process to be exercised periodically be fragments of Population or by territorial units. This right had no relevance for the provinces and the princely states. The Princely native States were part of undivided geographical India before independence and partition in 1947 and after that they were to become integral parts of either of the two countries-India or Pakistan. It is, therefore, absurd when some people talk of self-determination for Kashmiris. Why Kashmir is being singled out for exercising this right from among the six hundred and odd other States which acceded to India or among the dozen states which acceded to Pakistan, has never been explained. Kashmiris are not a third nation in the sub-continent. The word 'self-determination' appears to be so catchy that those who refer to it in relation to Kashmir have never applied their mind to what they are saying.

Under transfer of power and partition of India, Jammu and Kashmir is an integral part of India, which is a multi-ethnic, multireligious and multi-linguistic modern State. If some fundamentalists of the Kashmir Valley, which is the smallest part of the sprawling Jammu and Kashmir State, want separation from India on the basis of religion, it is a case of secession. To present this demand under the garb of self-determination is a fraud.

The concept of self-determination for the Valley was originally the brain-child of Communists when they endeavoured to make Kashmir an entry point in the north for spreading communisim

in the whole of India. An open space in front of Pladium cinema in Srinagar was even named as Red Square on the lines of Red Square in Moscow. Gangadhar Adhikari, a senior member of the Politburo of the Communist Party of India (there was only one C.P.I. at that time) was in-charge of the Communist movement in Punjab and Kashmir in pre-independence days. Through the good offices of B.P.L. Bedi and his wife Freda Bedi, he had successfully built up close contacts with some senior leaders of the National Conference and some young students, youth leaders and intellectuals of the State. At that time, Communists were sure that Kashmir, being next-door neighbour of both Soviet Union and Red China, could become a spring-board for Communist caravan. They dreamed to establish a semi-independent Kashmir with the glittering hope of turning it at an opportune moment into an Outer Mongolia on the sub-Continent. This Communist intrusion provoked the Americans to meddle in Kashmir. This meddling had, in fact, begun immediately after the Second World War had ended in 1945. Since then American meddling has been a coninuous affairs while the Communists had to give up due to circumstances beyond their control. The word self-determination is not only fashionable but also catchy. It has, therefore, become handy to those who want to bait India for some reason or the other. Americans have a global strategy and long-term plans for the world order and so they will do whatever suits them. They become hot and cold as the occasion requires. In Britain, some people continue to carry the imperial vendetta against India for unravelling the British empire. Sir William Goodhart, QC of International Commission of Jurists presumably comes in the line of British imperialists who tried very hard but unsuccessfully to Balkanise India in 1947.

The principle of self-determination was first enunciated by President Wilson of United States. It can legitimately apply only to territories, which are held in subjugation by other powers, as several African and Asian countries (including India) during the colonial period. After the first World War, in many cases, the principle of self-determination was wrongly interpreted, The

origin of the Second World War has been traced at lease partly to the indiscriminate application of self-determination in redistribution of boundaries in Europe, at Versails, where the Peace Treaty was signed. Actually, self-determination is a term which since World War-I, has been commonly used to denote the right of the people to choose freely such form of Government and of politics and cultural institutions as it thinks will best correspond to its needs.

At San Francisco in 1945, the question of how to incorporate the principle of self-determination in the Charter was debated. The framers of the Charter included in 1.2 of the Charter the following:

> "To develop friendly relations among nations based on respect of the principle of equal rights and sefl-determination for the peoples. The second reference in the charter to self-determination is in Article 55. The focus of both Articles 1.2 and Article 55 is on the development of friendly relations and creation of conditions of harmony and peace and stability".

The claim of a sub-national group to self-determination has nothing in common with the right of self determination claimed by people under colonial rule That is why the demand and achievement of self-determination by the Indians and Kenyans against the British, Algerians against the French, by the congolese against the Belgians, by the Angolans against the Portuguese cannot under any circumstances be considered for sub-national groups, such as Pakhtoons, Bluchis, Sindhis or Bahawalpuris in Pakistan or Nagas or Kashmiris in India. It was against latter type of challenge presented by the South to the American Union that Abraham Lincon had fought the civil war.

The principle of self-determination is a two-edged concept, which can disintegrate the countries. The United Nations has no jurisdiction in the matter, in the legal and constitutional sense, it is not authorised to issue a ukase freeing a people from a State and setting up a group as independent. It cannot establish rule or criteria for self-determination which are legally binding on any

one. As far the question whether member nations are obliged to ensure self-determination for people within their territory, a careful examination of Articles 55 and 56 of the U.N. Charter traditionally invoked by the proponents of this theory, would reveal that it is not so. There was firm belief at San Francisco Conference, where the United Nations Organisation was established in 1945, that world peace and international security was as much dependent upon the creation of positive conditions of stability and well-being of nations as upon the negative aspect of dispute settlement and enforcement machinery. There may be major human rights aberrations, they are always an internal affair of a country and cannot be made a tool for breaking it. The resolutions of the General Assembly were aimed at the colonial powers in the Trusteeship, Non-Self-Governing and other colonial territories. Any attempt to extend their application, despite the loose broad terminology ("all people") employed therein, to established States with demarcated boundaries, will create havoc in international relations. U.N. is concerned only with the maintenance or preservation of independence and rights of States to sovereignty.

In 1964, Organisation of African Unity Summit Conference and the Non-Aligned Conference adopted resolutions re-affirming the validity of all frontiers as they existed on the date of independence. The resolutions represent the entire Afro-Asian-Arab State practice. The application of self-determination has been expounded and limited in the United Nations and "all peoples" have been identified as the non-self-governing peoples separated by salt water from their colonial masters, who are all white European or European-descended peoples. Self-determination has relevance only to the process of decolonisation. The "self" contemplated in the enunciation of this democratic principle is not and cannot be a constituent part of the country. It can be operative only when one is dealing with a nation as a whole and the context in which it can be applicable is the context of conquest or of foreign domination or of colonial exploitation. It would lead to disastrous conseuquences if the expression were

extended to the integral part of any country or section of its population or to enable such integrated part or section of population to secede. The principle of self-determination cannot and must not be applied to bring about fragmentation of a country or its people.

Harold S. Johnson has put it thus:

"A belief in self-determination can have anarchical implications within the present international State system. It suggests an opportunity for a group of individuals to disregard all established political relationship in search for new one.... No government could hope to survive which consented in principle to a secession of a part of its territory by a vote of secessionist groups. The stability of the State itself rejects any such claim".

There are innumerable countries in Africa and Asia with dissident minorities. Many of these minorities might like to set up Governments of their own. The map of the world will have to be redrawn and many State members of the United Nations could be broken up. Many countries today have populations made up of different races, religions and cultures and the future of the world depends on the evolution of the multi-racial States and nations in different parts of the world. The thesis of Pakistan and those who talk of self-determination for Kashmir is a reactionary and obscruntist one. They would go to the days when countries permitted only one religion and persecuted those who followed another faith. The principle of self-determination is like an explosive substance. One may agree in principle to its use when the necessity and urgency of the occassion is proved. But no one can consent to the use of the dynamite without first knowing the area that is intended to be blown up. If the dynamite is going to blow up the whole structure or if it is not possible to localise its application to a particular part, he may well refuse to apply the dynamite.

It is necessary to have a clear understanding of the scope of limitations of the principle of self-determination. There seems to be a complete lack of such an understanding. It is, therefore, necessary to begin with the question what is the de facto and de

jure connotation of this principle of self-determination. The term "self-determination" became current in the beginning of forties. But it describes something which is older. The idea underlying self-determination has developed along two different lines. During the 19th Century, self-determination has meant the right to obtain national independence from the alien race irrespective of the form of Government. The principle of self-determination, like virtue, receives in theory the full-throated support of every member-State of the United Nations. The newly-independent States, while vociferously championing the cause of self-determination as applied to colonial territories, have denied-and rightly its applicability to sectional and tribal ambitions in their own territories. This, they argue, would open up the Pandora's box and lead to chaos and disintegration.

The question of self-determination for the people of Kashmir is a misnomer. The whole controversy between India and Pakistan is not whether people of Kashmir are entitled to self-determination which is tantamount to independence, but whether the people should be given the right to ratify the Maharaja's accession or be allowed to opt out to join Pakistan- and if so under what conditions? That, in the usual cannotation of the term, is not self-determination. The idea of self-determination by itself is a transferred version of the original notion of plebiscite to confirm accession. Modern international law does not recognise any right of self-determination which can be applied or enforced in Kashmir. The State of Jammu and Kashmir is not an Indian Colony. The principle of self-letermination is not available in support of disruption and secession. Pakistan's demand for sefl-determination for Kashmir in the name of religion and its endeavour to run down Indian secularism are parf of an effort to restore its self-image as the "homeland" of all Muslims of the sub-continent. Pakistan simultaneously calls the Kashmir issue as an unfinished task of partition conveniently ignoring the fact that an unwritten corollary of partition is migration huge and horrible where it will end none can predict.

Assuming that every Muslim in the Kashmir Valley desires separation from India on the basis of religion and by pushing out all non-Muslims from the Valley, it is only some three million people out of a population of ten million in J&K who may claim alienation. It should also be noted that out of 120 million Indian Muslims, Kashmiri Muslims are only a minusculity. The wider implication of accepting any separation of J&K is to be faced with widespread disaffection, communal and religious violence, fissiparous anarchy across the entire sub-continent. It will give life and legitimacy to the unwritten corollary of partition, i.e., massive and bloody migration of population. It will mean not on but fifty Bosnias.

Had Kashmir acceded to Pakistan, it would have been an integral part of that country and self-determination would have no place in this process. Now it has acceded to India, this principle is equally irrelavant. Discontent in Kashmir cannot be the reason for self-determination or secession for its people. There are groups of people in many countries including Pakistan who are discontented and who would like the right to choose independent Statehood, but no organised State can tolerate any secessionist movement. In modern times, Kashmiris have been most protected and pampered people. They have not been victims of experiments such as Russification and Sinicisation of minorities in neighbouring regions. Neither forced demographic transfer nor any ideological doctrines have ever been thrust on Kashmiris. In fact, India's Central Government has been overzealous in protecting the Kashmiri Muslim identity. Kashmiris have been able to protect themselves from the demographic onslaught of Pakistanis, Pathans, Chinese, Afghans, Tajiks, Kazaks, Uzbegs, Bangladeshis and others. Kashmir's case has been subsidisation and not colonisation by India.

The Indian Constitution which does not permit units to secede is not an essay in colonialism but the realist mode of building up a strong State in Asia and the world. Some people roused by an extremist slogan of religion cannot be allowed to destroy the country. A very noble sentiment is expressed by well-

meaning individuals—leaders and others as an ultimate argument that the will of the people of Kashmir should be respected. What a sacred idea? An unquestionable, universal democratic principle. The will of the people in every unit, State, province, region, sub-region throughout the world is to be respected. But this is to be within the laws and the Constitution of the concerned country. The countries with Constitutions based on democratic principles take best care of it. Respect does not mean allowing some people to break these very pillars of social existence, which is the most precious achievement of modern civilisation after centuries of barbarity.

At the time in history when the Soviet Union has disintegrated, Yugoslavia (a beautiful country whose people were happy a few years back) is in pieces, can any patriotic Indian be oblivious to the sinister idea of self-determination for Kashmir? India is not an artifical construction of some despotic dictator and can be unravelled once the dictator departs. India is an ancient organic union reared in tradition of the oldest unbroken culture in the world. The concept of India is not based on the declaration of a Mountabatten or anybody else for that matter. Pakistan has a vested interest in keeping Kashmir on the boil, if not on the burn and as long as this is the case— and this will always be the case—there will always be something going on in Kashmir all the time. Bosnia, Georgia, Tadjkistan, Azerbaijan and Afghanistan would be repeated ten times in dimension in the Indian sub-Continent because of the size, the numbers and the range of ethnic, linguistic and religious forces involved. A replication of the prolonged violence in former Yugoslavia and Soviet Union, Somalia, Sudan is easily anticipated if quickfix solution for J.&.K. in the form of self-determination is considered. A belief in self-determination can have anarchical implications within the present international State system. It suggests an opportunity for a group of individuals to disregard all established political relationship in search for new one. No government could hope to survive which consented in principle to a secession of a part of its territory by a vote of secessionist groups. The stability of the State itself rejects any such claim.

The international pan-Islamic movement, which has its premier agenda to nourish different religious separatist uprisings in the world, is abetting terrorism and subversion in Kashmir under the guise of right of self-determination.

If the principle of self-determination is applied to Jammu and Kashmir and taken to its logical conclusion, at least nine countires will emerge out of it whose local war-lords will start the industry of killing one another at the earliest opportunity. Kashmir Valley itself will get partitioned at least into three major and distinct regions, i.e., 'Maraaz' with Anantnag as its capital; 'Yamaraaz' with Srinagar as its capital and 'Kamaraaz' with Baramulla as its capital. In 1988, four youths had lost their lives in voilent agitation which the people of Shopian had launched to get separation from Pulwama district.

Pakistan's Foreign Minister, Mr Assif Ahmed Ali in an exclusive interview to Pakistan's prominent national daily "Dawn", Karachi, which was published in its issue of December 5, 1994, said: "Our people are made to think all types of things without assessing the ground realities. What is the status of self-determination in the world? It is my assessment that self-determination is now a concept which people are really afraid of, because of the massive ethnic operations which have errupted all over the world after the cold war. Unless we understand these developments, we will not be alive to the world situation and, therefore, likely to make mistakes. We are not recognising some basic ground realities".

Bluchistan is the homeland of Bluchis. It consists of two parts, Bluchistan and Qalat. The National Bluch Party (Anjuman-e-Watan) demanded independence or autonomy through plebiscite. A reign of terror was let loose on this province. The Manchester Guardian had, on April 21, 1962 described Pakistan's rule in Bluchinstan as "Typical of good colonical rule in which there is a wide gulf between it and the people". This was the ground reality in Pakistan. But military dictatorship ruling under the Marshall Law, curbed the people's movements by freely deploying most modern and sophiticated American-gifted

weapons. Earlier, it had also crushed the Pakhtoonnistan Movement with a heavy hand. Pakistan Government resorted to this unprecedented force to maintain the integrity and sovereignty of the country. So its actions were lawful, because any tolerence of concept of self-determination would cut Pakistan into pieces leading to disastrous consequences for its people.

The classic case of boundaries not conforming to ethnic, religious and racial frontiers is Sudan. The northern part of Sudan was predominently Arab and the Language of administration was Arabic. The Southern provinces has Christian dominence with English as the language of administration. Due to this communication cleavage, there was tremendous alienation in the Southern region. In 1956, at the time of independence and thereafter there was a strong agitation for self-determination. But the Government at Khartoum violently curbed the demand. All Arab and Islamic countries including Pakistan supported the Action of the Khartoum regime. When Somalia attained independence in 1960, from the Italian-administered Trusteeship, she tried hard for claiming independence for those parts of Ethopia and Kenya, which were overwhelmingly inhabited by Somali tribes. But the Somalian delegate in the U.N. General Assembly was not allowed to raise this issue even in the debate, in 1960, on the famous Declaration concerning colonial independence. The British did not accept the self-determination of Ireland as a whole. If the logic of self-determination is applied, a good part of Northern Ireland will join Irish Republic, leaving isolated pockets of Protestant minority, who want to continue with the United Kingdom. The Basques of Spain, the Corsicans, the Wallons of Belgium will all be entitled to self-determination. The U.S. and British have endorsed the concept of Russian Federation and have refused to accept self-determination of Chechnya. The titular Khan of Kalat in Pakistan has revived the controversy about the merger of Kalat in Pakistan. The unadministered areas of Pakistan and Norther territories will have a very strong case for self-determination. So will the M.Q.M. (Mahajir Qaumi Movement) which may want self-determination in Karachi and other areas of southern Sindh Province of Pakistan. The U.N.

Secretary General had drawn attention to the problems posed by claims of self-determination on the basis of ethnicity and predicted that if the trend is unchanged, the U.N. Community will have more than 500 States and will be unmanageable. Such Bosniaisation will not promote human rights but will lead to ethnic cleansing.

Sometimes word "nations" is used in contradistinction of the word "people" without indicating their exact parameters or meaning and scope. The British jurist, Sir Ivor Jennings has observed:

> "On the surface it seems reasonable: let the people decide. It was, in fact, ridiculous because the people cannot decide until someone decides who are the people".

No decision could be taken by the United Nations. In fact, there could be endless argument about the criteria for determining whether a group, whatever its character, could be called a people in contradistinction to the nation or to the State to which it belonged: and to emphasise the distinction between peoples and nations would be a direct encouragement to divisive tendencies.

The U.N. General Assembly in 1950, 1960 1966 had been engaged in long and controversial debates about self-determination but no exclusive conclusions could be reached. Only the principle of freedom from foreign rule was hailed. Lest the Principle might be stretched too far, in 1971, the Special U.N. Committee on Friendly Relations between States made it clear that self-determination was not to be exercised for "authorising or encouraging any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance of equal rights and self-determination of the peoples.... and possessed of a government representing the whole people belonging to the territory without distinction of race, creed or colour. In paragraph 8 of the 1970 Declaration the issue was clinched in the following words:

> "Every State shall refrain from any action aimed at the partial or total disruption of the national unity or territorial integrity of any other State or territory".

The United Nations Charter is the product of the united resolve to accomplish certain aims by the nations of the world and not by the numberless peoples meaning ethnic, religious, linguistic, political or other groups. The Charter was never intended to denigrate a nation or a national-State signatory to the Charter or to encourage divisive and secessionist groups. In 1970, the then U.N. Secretary-General, U.Thant in answer to a question about the demand for self-determination of Biafra from Nigeria had said: "As an international organisation, the U.N. had never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its member-State." He again said: "I think this concept of self-determination is not properly understood in many parts of the world. Self-determination of the people does not imply self-determination of a section of a population of a particular member-State... When a State applies to be a member of the U.N. and when the U.N. accepts that member then the implication is that the rest of the membership of the U.N. recognises the territorial integrity, independence and sovereignty of this particular member-State. If the constitution and laws of a country do not permit secession and the secessionists engage in armed uprising or terrorism and militancy, then the latter has the primordial right and responsibility of suppressing such uprising."

Important powers cannot sometimes resist the temptation of using self-determination as a football of power politics. While the big powers waxed eloquent over Bosnia Herzegovina's 43 per cent of Bosnians right to self-determination to the point of seceding from Yugoslavia, they denied the same right to 35 per cent Serbs or 16 per cent Croats of secession from Bosnia-Herzegovina. There are instances in which, while opposing secession in one case, they have supported or acquiesced in secession elsewhere. The exigencies of power politics and what goes by the name of national or global interests and sometimes a desire to settle old scores, have been the motivating factors in the positions taken by many responsible powers. Abraham Lincoln had regarded self-determination or secession as "Essence of anarchy".

No State can at the present time from the point of view of Constitutional law recognise the right of secession founded upon the right of self-determination. By doing so it would invite its own destruction. Self-determination is the theme of many individuals and groups of individuals in India. The human rights business is just another way of tweeking India's nose for selling the theme of self-determination for Kashmir. The various external pipe-lines are enough to attract our Kashmir experts like flies to syrup.

Chapter 4

The American Meddling

India's Home minister, Mr. S.B. Chavan has accused the American Government of seeking a foothold in Kashmir. It is relevant to examine the American policy on Kashmir in this context.

In 1945, many Americans had retired to the Kashmir Valley outwardly to take rest and recoup health but in reality to study its geography and its politics. Early in 1947, two American Intelligence agents—Nichol Smith and Lauren Turtle—shot 18000 ft. film about Kashmir. This was mostly about possible sites for aerodromes and military bases. The same year, another U.S. Intelligence agent, Russel K. Haight, a 23-year old Engineer wanted to make Kashmir a strong base for the United States. Wearing a Pathan raider's turban and uniform, he led Azad Kashmir forces as a Brigadier-General. When India was partitioned, the British conspiracy dragged Kashmir to U.N. Kashmir's strategic location in the Himalayan watershed was and continues to remain a great temptation for the U.S.A. to be physically around. The situation could develop only in independent Kashmir. American Kashmir policy is tied to an interest to gain a platform in autonomous Kashmir for its Central Asian strategy.

Loy Henderson, the U.S. Ambassador in India told his Secretary of State in a cable sent on September 29, 1950 that secret diplomacy was carried out over the head of the Government of India on Kashmir. During Henderson's talks with Sheikh Abdullah in Srinagar, prominent agenda was independence for Kashmir and U.S. investment therefor. To allay apprehensions of Henderson, Sheikh justified his measure of drastic land reforms by "calling it a tactical move to neutralise the radical activities

of Communists in the National Conference Party rather than a measure of his ideological conviction". In the heat of U.N. debate over Kashmir, the U.S. Democratic Party's Presidential candidates and Chief Permament delegate of the U.S. to the United Nations, Adlai Stevenson met Sheikh Abdullah in Srinagar from May 1 to May 3, 1953. Their last meeting lasted over seven hours and its result was apparent when Sheikh later publicy declared "Independence option" as the best option.

During his visit to India and Pakistan on May 26, 1953, Secretary of State, John Forster Dulles, canvassed support for independent Kashmir. Immediately afterwards the New York Times, in its issue of July 5, 1953, on the front page, displayed a map of Kashmir with the caption: "A proposed division would give the North-Western area to Pakistan and most of Jammu and Ladakh to India. The remaining area including the Vale of Kashmir would be independent. On April 10, 1958, Dulles forwarded to President Eisenhower the partition proposal on Kashmir as intimated by Williams M. Rountree, his Assistant for North East and South Asia. In October, 1962, when China suddenly launched an attack and occupied large tracts of Indian territory, undue advantage was sought to be taken of India's compulsions. Two senior diplomats, Averil Hariman of U.S. and Duncan Sandys of Britain visited India and Pakistan. Subsequently, the American partition plan was the agenda of talks between Sardar Swarn Singh and Z.A. Bhutto for several months. However, when China unilaterally whithdrew, India managed her rescue from the trap.

After 1975, with Sheikh Abdullah again in power, many think-tanks became active. Some secret missions also made their way into the Valley. Nelson Rockfeller visited Kashmir on April 30, 1978 and had intimate discussions with the Sheikh. President Reagan's high profile emissary, Chalton Heston visited Kashmir in 1980. Later on, a number of U.S. and British diplomats like William Saxbee, Philip Talbot, Villanders visited Kashmir and met Sheikh and other Muslim leaders. A Belgian Intelligence officer stayed in Ladakh to carry out the assignment he was entrusted with.

With surfacing of terrorism, American policy-makers came out with a number of solutions for Kashmir which were meant to force India to retreat a step or two and make room for their direct or indirect presence in Kashmir. Human rights issue was used as a hit stick in collusion with some individuals and groups within India. Munro's "Economic Zone" theory, which wanted to make the Valley as Sub-Continent's Hongkong was floated. Stephen Cohen and Vigasin put forth independent Kashmir concept. Rodulphs enunciated 'limited' or 'shared' sovereignty doctrine for Kashmir and Setig Harrison spoke of "Greater Muslim Independent Kashmir". James Clad, a senior associate at the Carnegie Endowment for International Peace has stated, following his prolonged discussions in New Delhi, that the Indian Government was under tremendous pressure to cede further territory in Kashmir so that China and Pakistan could feel secure about the road linking the two countries.

Carnegie did a study in India during 1992, which received a great deal of publicity in the U.S. The Carnegie Endowment Study Group had presented another report titled "India and America—the Cold War". In this report, it had been suggested that India unilaterally withdraw from Siachen as a stimulus to broader dialogue on confidence-building measures. The United States Institute of Peace (USIP) is an autonomous organisation set up by an Act of U.S. Congress and is part of Federal Government. There is hardly a think-tank in the U.S. that does not have a C.I.A. smell in it. In mid-January, 1993, U.S.I.P. held a four day discussion on Kashmir in Washington D.C. The convenor of the meeting was Robert Oaklay, former U.S. Ambassador to Pakistan. Discussions were conduted by Ambassador Sam Lewis who headed the State Department's Policy Planning Council. Seven Americans, seven Indians and eight Pakistanis took part. James Clad was also one of the active participants. In Brussles, Timothy Sisk outlined Track-2 diplomacy. As part of this, selective journalists, retired bureaucrats and some other public opinion builders from India are regularly invited to U.S.

Institute of Peace. The brief to them is to canvass support for American proposals on Kashmir through media and other means.

A conclave was held in a hotel in Bombay in June, 1990, where 'independent Kashmir' was proposed if complete autonomy was not acceptable to Muslims of Kashmir Valley. 'Independent Kashmir as it existed before 1947', is another ploy to sell the U.S. Think-Tanks' proposals. Pressure was put on India to recognise the various sectarian religious leaders belonging to about fifty mutually antagonistic groups as Kashmir's spokesmen under the label of "Huriyat" conference. The U.S. visiting professors lobbying in India have been able to create an opinion for an 'autonomous' Kashmir' among journalists and retired personalities. Straws have been thrown by suggesting that the Kashmir Valley is not necessarily required by India to defend Ladakh. Many free trips to Pakistan to attend CIA-sponsored seminars and junkets are offered. Indian Government has also remained subservient to a minuscule but highly voluble lobby which believes that social and intellectual existence is incomplete without a meaningful pro-Pakistan tilt.

For decades we were told that Sheikh Abdullah was the key person to solve the Kashmir imbroglio, Indira-Abdullah Accord was the result. But he and later his dynastic descendents, son and son-in-law only paved the way for militancy and terrorism. Then Amanullah Khan Dardi, who was CIA's "might be needed person", was called the right man. Later, when Abdul Ghani Lone, Yasin Malik and Shabir Ahmed Shah surfaced in that order, media men and "intellectuals", hooked to the pipe-line, followed suit. America's latest is Farooq Abdullah with greater automomy and soft border.

It is very surprising why America is not willing to concede to India the same measure of commitment of "national security" and "interest" that it has accorded to itself particularly when threats and challenges to India are far more complex and immediate. There is a highly disturbed and uncertain situation in Afghanistan and Wakhan corridor. China has large and highly strategic tracts of territory of J&K in its possession under the

boundary agreement with Pakistan signed in 1963. Both Pakistan and China are strategically well placed on the north western flank of Jammu and Kashmir with territorial control as well as the Korakaram highway. United States should not see India only as a big emerging market but also as a successful secular democracy despite its multi-religious, multi-ethnic and multi-linguistic composition. The tragic aftermath of disintegration of Soviet Union and Yugoslavia and inability of the world to deal with such fissures, is warning enough to what kind of instablities can be unleased if stable multi-pronged political pluralism is not nurtured. America should not limit international terrorism to acts perpetrated against itself and its citizens only. U.S. Think-tanks should also be told that India's national interests are not subject to structural adjustments and multilateral arrangements forced on it by others.

American policy-makers believe that India my one day be induced to abandon Kashmir. All efforts are made to undermine the status of Jammu and Kashmir as a State which acceded to India in full conformity with the internationally valid law on the transfer of power in 1947. Pakistan and Robin Lynn Raphel are seeking to re-open the issue of accession by bracketing "the people of Jammu and Kashmir" together with India and Pakistan as parties to a so-called dispute. Senior U.S. officials have become accustomed to giving homilies on the need to respect the wished of the people. For nearly 45 years, the United States, from Loy Henderson to Robin Lynn Rahpel, has in different ways, strived to get a foothold in Kashmir through Pakistan or an "indepdent Kashmir". In this scheme of super power diplomacy they have preferred alliances with religious bigots and military dictatorships to democratic nations. The threat posed by Pan-Islamic storm-troopers to the existing system of nation-states is being by-passed.

America is using all means to coax, cajole and coerce India to fall in line with American macro-strategic objectives globally and regionally. There is a wide chasm of unbridgeable perception between the two countries in all vital areas of concern like

nuclear non-proliferation, missile development and deployment, technology transfer control regimes, Kashmir, human rights, environment and trade. It is the American megalomaniac obsession to be the unquestioned arbiter of the global politico-economic military dispensation of which matrix the role sought to be imposed upon India is that of utter capitulation, pussilanimity and subservience to diabolical American design. U.S. has introduced great deal of acrimony into Indo-U.S. relations. Internal issues of goverance in India are now routinely raised as if they were the legitimate concern of U.S. In recent times we have been witnessing emerging U.S. Congressmen to learn the first step of bullying and choosing a soft target in India. Any Tom, Dick and Harry aspires to become expert on human rights by talking blah-blah on Kashmir. These johnies are not ignorant about the violations by their own country or by other counties. But, simply because India being sensitive and extra cautious on human rights, responds and explains its stand and behaviour to the world, do these amateurs get boldened to bait her more and more.

We understand from history that U.S. can arm Pakistan. It can pressure India but it cannot balance it and it cannot have its way unless India co-operates or is weak. Indians should cease to look forward to any propitious smiles or gestures from anybody. who is somebody in U.S. bureaucracy for purposes of building any basis of our bilateral relations with Pakistan. Rather the way U.S. dealt with their problems relating to Nicaragua, Panama, Grenada, Haiti and Cuba should show us the independent way we deal with Pakistan. It is high time we delink ourselves from the gravitational field of U.S. centred solar system. India's leaders must show guts and call a hack a hack without equivocation. Any manifestation, however feeble or fragile of buckling under American black-mail tactics, would be tantamount to compromising with India's security and sovereignty. The supreme power of the world should be reminded that India is firm in regard to her interests and will safeguard these within the framework of its own national, political and moral terms of reference.

American meddling in Kashmir is like India calling for return of Texas, California to Mexico because Mexican rights must be safeguarded. The return of Alaska to Russia because they didn't pay them enough for the land or the people did not have a plebiscite to determine whether to be independent or not. Does President Bill Clinton advocate having a plebiscite in his State of Arkansas to determine if it should be independent or not because this State has one of the worst histories of anti-labour, anti-workers Unions, pro-big business activity in America? Some Parliamentarians from India could plead for sending a peace mission to Mexican border to look into the problems of Hispanics. They may also feel "deeply concerned" and suggest that America be returned to native Americans from whom the land was stolen.

Chapter 5

British Labour Party's Kashmir Agenda

In Britain's Labour Party there are some stalwarts who appear to be scarcely aware that the world has moved very far from what they saw it to be when they went to sleep. Among the rare specimens is Roy Hatterseley, a former deputy leader of the party, who, last year, shared a platform in London with Pakistan's Foreign Minister and pledged his support for a plebiscite in Kashmir. Another senior Labour M.P. Gerald Kaufman wanted to strengthen the hands of the Party leadership to adopt a formal resolution on Kashmir at the Party Conference. Mr Liz Lynne, Liberal Democratic M.P. recommended trade sanctions to be imposed against India. Another senior Labour M.P. wanted to strengthen the hands of Party leadership to adopt a formal resolution on Kashmir at the Party Conference. The other two M.Ps. Clare Short and Max Madden are enthusiastic supporters of Kaufman for this task.

What makes these M.Ps. speak as they are doing? It is simply to safeguard their Parliamentary furture. It is only for this reason that Kaufman and Hattersley have become crusaders for Jihad in the Kashmir Valley. Kaufman having narrowly averted an attempt by pro-Pakistan lobby to have him unseated, has decided to take absolutely no further chances. They consider a formal Party resolution a high point of an initiative to use the numerical clout of Pakistani residents in Britain to elevate Kashmir to the top of the British Foreign policy agenda. The Labour M.P. for Glasgow Hillhead, Mr George Galloway announced in the House of Commons on April 24, 1995: "The knowledge that a British General Election may be just round the corner helps concentrate Members of Parliament on issues of importance to large sections of the community. According to this Labour M.P,

who was awarded by the Pakistan Government, the title of "Hillal-i-Quaid-i-Azam", " if the Members of Parliament know that there are a thousand voters for whom Kashmir is an issue, then it will become an issue". Mr Galloway quite plainly said that this was aimed at M.Ps. in marginal constituencies. Discounting a suggestion that this would result in the alienation of Indian community in Britain, Mr Galloway said that "If the cost of peace is inactivity and peace of the graveyard, we don't want to observe it". Mr Galloway's stridency also stems from an awareness that Indian community is relatively unorganised and rarely votes as a block. The Pakistan community, by contrast, have made concerted attempts to infiltrate the Labour Party and shape its agenda. Mr Galloway proudly announced that he hoped that Mohammed Sarwar, a Labour Councillor in Glasgow, would soon become "the first Muslim M.P. in Britain. Mr Galloway added that he had invited the Hurriyat leaders from Kashmir to visit Britain. Apart from Mr Galloway, the Pakistani attempt to force Kashmir into the British political agenda has the support of other Labour M.Ps. including Roger Godsiff, Maz Madden and Tom Cox.

Kaufman's constituency is Manchester-Gorton where a large number of people live who are originally from Pakistan, many of them from the Punjabi-speaking districts of Pakistan-occupied area of Jammu and Kashmir, such as Muzzafarabad and Mirpur. This explains why Kaufman speakes as he does.. In the third week of June, 1995, Kaufman and Labour M.Ps. Clare Short and Max Madden representing similar constituencies in Bradford and Birmingham got ready a "model" resolution for Labour's National Executive Committee, principles for an incoming Labour goverment, building upon U.N. Security Council resolutions based on the Principle of self-determination for the people of Kashmir.

For the past two decades, Labour Party has been rejected by the electorate because it lacks clear policies and its leaders keep fighting among themselves. The Party is now desperately trying to gain power by abandoning its ideology and diluting the principles of its own founding fathers. Leaders like Ms Shirley

Williams, Mr David Owen and Mr Roy Jenkins had to leave the party because of such policies. A good number of Labour Party's constituents are Pakistani expatriates, mainly unemployed and dependent on social security benefits. The Party is under pressure from these constituents. It is becoming increasingly clear that Labour M.Ps. are being propelled into taking a pro-Pakistan line on Kashmir because of crass vote bank compulsions. For nearly four years, the foreign policy apparatus in Pakistan has targetted Britain as a potential ally over Kashmir. Internalising the methods which were used by Irish Republicans in the U.S., Pakistan opted to transform the one-million strong Pakistani community in Britain into a Muslim vote-bank. As elections near and political parties put their best foot forward to court organised pressure groups, the Pakistan lobby has made it clear to sitting M.Ps. that they cannot hope to secure their support unless they are supportive of self-determination in Kashmir, which they call Indian-occupied.

Shadow Foreign Secrerary, Robin Cook appeared at a meeting on Kashmir on October 2, 1995, organised by a pro-Pak group to suddenly declare that Labour backs the U.N. resolutions on Kashmir and that a Labour Government would actively take up the Kashmir issue because it has a "duty" in finding a solution "as the former imperial power in a dispute that dates from the arrangements for independence". Mr Gerald Kaufman, former shadow Foreign Secretary claimed credit for the meeting formally hosted by the group—Justice for J&K. The meeting was held in the Charollete Hall of the Grand Hotel at 08-15 P.M. on October 2, 1995. Labour Councillors from Bradford and Luton, where Mirpuri Pakistanis form a significant segment broke all records in villifying India. They blatantly lied in relating the conditions in Kashmir to the delegates and leadership. It appeared leaders were listening unethical attacks on a friendly country with the sole object of ensuring a few seats in the House of Commons in Midlands. Their rhetoric and choice of words was despicable, yet the leaders on the stage kept mum. Freedom of speech was tactfully exploited to please the Mirpuri voters and appease a few Labour M.Ps.

Mr Cook's turnaround on Kashmir came two months after a meeting in Brent, London, in which he had declared that Kashmir is a part of India. But Mr Cook told senior Labour M.Ps. after that meeting that the Indian High Commision had sprung up the Kashmir question through a front of India Councillors. He had not been told he would have to speak on Kashmir, he had said. Mr Cook said: "Labour Party recognises the disputed status of Kashmir territory" and the validity of the U.N. resolutions. He referred to the Shimla accord but dismissively. "Kashmir", he said, "would be high on the agenda of Labour Government", Mr Cook confessed that this policy has been decided at the instance of some M.Ps. led by three, Kaufman, Max Madden and Clare Short. Kaufman said that the two M.Ps. had written 650 letters to all the Labour units in consituencies to pressure the Conference Arrangements Committee to include the Kashmir resolution in the foreign policy debate. This had been achieved "for the first time in half a century". Cook added: "The Kashmir dispute is not a problem of India and Pakistan, but a world problem".

The National Executive of the Labour Party adopted a statement on October 5, 1995 endorsing both the U.N. Resolutions and the Shimla Agreement as means of resolving the Kashmir dispute. The statement called upon Britain to "accept the responsibility as the former imperial power in a dispute that dates from the arrangements for independence and recognise that it is under an obligation to seek a solution". Introducing the resolution on foreign policy at Brighton, the shadow Foreign Secretary, Mr Robin Cook offered his good offices to both India and Pakistan to resolve the Kashmir problem. The former Labour Party deputy leader Mr Roy Hottersley, who anchored the preceedings on T.V. said that he was "unequivocally" committed to "self-determination" for Kashmiris. Mr Harttersley described New Delhi as the "Worst urban slum". India was called one of the worst violaters of human rights. Mr Javed Mirza of Peterborough said that this was "only a start". Having used their strategic clout in 30 marginal Parliamentary seats to embarrass India, the pro-Pakistan lobby, is already planning for things more ambitious.

Ordinary Labour Party activists have begun equating Kashmir and Bosnia. Mrs Glenys Kinnock, Member of the Europeon Parliament and wife of the former Labour leader, Mr Neil Kinnock became mad on BBC T.V. Mr Mukhtar Ali of Bradford drew loud cheers from the Conference. A large number of Mirpuris were present in the Conference venue.

The Labour Party under the youthful leadership of Tony Blair, has a major obsession to overcome John Major. This it believes will be possible by winning some extra seats, a segment of which is determined by voters of Pakistani and Mirpuri origin. Labour Party's devotion to these votes is so overpowering that its shadow Foreign Secretary, Mr Robin Cook was forced to make a right abouttum on his statement a few months earlier that Kashmir is a part of India. The Labour pains that one witnessed at Brighton may deliver some seats in the House of Commons, but the Labour government, if it comes into being, will have to pay heavily for its special fascination for Mirpuri Muslims.

If Labour acts can Conservatives be far behind? Noted columnist, Malcolm writing on March 16, 1995 in the editorial page of 'Daily Telegraph' chastised the Conservatives for under-estimating the Muslim vote and pointed out that by default, the community has become the property of the Labour Party even though its social traditions make it a natural ally of the Conservatives. John Major has been accused of limiting his interest in the country's Muslims in inviting a few millionaires among them to tea once a year to solicit funds for the party.

The previous British Foreign Secretary Douglas Hurd, after attending a Centenary jamboree of Confederation of Indian Industries at Calcutta last year, descended on Delhi to tell pressmen that he or his government was not ruling out the third option in Kashmir, namely, independence. Who is Hurd to come here and tell us that independence for Kashmir was one of the options that could not be ruled out? Whether Hurd and Co. like it or not, Kashmir is a part of India. It is no business of a Foreign Minister of England to come here and tell us that he would have no objection if a part of India was allowed to secede and set free.

Did Indian Foreign Minister go to London and tell pressmen there that he did not rule out a third option for Northern Ireland? Or Bradford should be given self-determination because it is predominently Muslim.

Both Tories and Labour have become desperate after both the parties were defeated in the by-election in the Saddleworth constituency which was won by Liberal democrates. There is, therefore, going to be a race between the two parties for cornering Muslim votes. Muslims have put to the candidates that they must support Kashmiri Muslim separatists. Therefore, India will be at the receiving end during the period Britain prepares for the next General Elections. Pakistan has a definite agenda. India is mercifully not an ideological State. but ecularism never meant presenting the other cheek. And "quiet diplomacy" does not mean keeping quiet. It is humiliating that India's representatives listen to hogwash from biased British M.Ps. about Kashmir and do not make even an oral protest.

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This book challenges, for the first time, the belief widely held for nearly five decades, that the U.N. Security Council has passed resolutions proposing a plebiscite in Kashmir. It has been proved conclusively that no such resolution was ever passed by the U.N Security Council. Readers will find this startling revelation a factual reality. A fitting rejoinder has been given to the prominent Western writer, Alastair Lamb, who has raised doubts about Kashmir's accession to India through his books. The misplaced partisanship of British jurist and Chairman of International Commission of Jurists, Sir William Goodhart, QC in regard to the validity of self-determination vis-a-vis Kashmir, has been thoroughly exposed. The continued American meddling in Kashmir right from 1945 and British Labour Party's unethical attempt to black-mail India on the Kashmir issue, to appease its Muslim vote-bank in Britain, have been completely unmasked. Pakistan, separatists in the Kashmir Valley and some others talk of India's commitment to Kashmir The book provides complete and flawless answers to all these people. It explains very vividly how the creation of Pakistan and accession of Kashmir to India are the products of one and the same settlement. The question of self-determination, has been given detailed treatment and it has been proved conclusively that no such right accrues to the people of Kashmir under any law, reason or logic. The book throws the bombshell by exploding the myth that the U.N. Security Council ever passed any resolution which proposed plebiscite in Kashmir. American think-tanks and the British Labour Party's tactics have been thoroughly exposed.

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Dinanath Raina is the author of two books on Kashmir. namely: Unhappy Kashmir—The Hidden Story and Kashmir—Distorions and Reality. He made a debut in journalism in 1947 in Jammu and Kashmir. For being more objective and fearless than the authorities expected him to be, he was detained as a political detenue for six months. Later he joined the Indian News Chronicle, Delhi which subsequently incorporated in the Indian Express. He also worked for some time in the Central Office of Kisan Mazdoor Praja Party, which was launched by veterans of freedom struggle, Acharya Kripalani, T Prakasham, Dr. P.C. Ghosh, K. Kelappan and others. He was awarded Pandit Prem Nath Bhat Memorial Award for Non-Professional Journalism for 1994, which was presented to him by Lt. Gen. D.D. Saklani, Adviser to the Governor of Jammu and Kashmir

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